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DISCRIMINATION AGAINST WOMEN

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 18 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Initial reports of States parties

LUXEMBOURG*

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CONTENTS

		Page
Article 2:	Elimination of discrimination	3
Article 3:	National mechanisms to safeguard human rights	15
Article 4:	Temporary advancement measures	19
Article 5:	Patterns of conduct	21
Article 6:	Exploitation of and traffic in women	27
Article 7:	Political and public life	31
Article 8:	International representation	36
Article 9:	Nationality	37
Article 10:	Education	38
Article 11:	Employment	43
Article 12:	Health	59
Article 13:	Economic and social life	64
Article 14:	Rural women	66
Article 15:	Equality before the law	69
Article 16:	Personal and family rights	71

INTRODUCTION

The Convention on the Elimination of All Forms of Discrimination against Women, which was adopted in Luxembourg by the Act of 15 December 1988, was ratified on 2 February 1989. In accordance with article 27, paragraph 2, the Convention entered into force for Luxembourg on 4 March 1989. Luxembourg therefore embarked rather late on the new course which the United Nations mapped out in 1979 to improve the status of women, the originality of this step being that it was the first time any text had been adopted dealing specifically with discrimination against women.

Having signed the Charter of the United Nations (Articles 1 and 55 of which are relevant), the Universal Declaration of Human Rights (article 2 of which is relevant), the International Covenant on Civil and Political Rights (articles 2 and 3 of which are relevant) and the International Covenant on Economic, Social and Cultural Rights (articles 2 and 3 of which are relevant), and in its efforts to remove the most glaring and greatest obstacles to ratification of the Convention, Luxembourg was already implementing the provisions of the Convention prior to 4 March 1989.

In addition, Luxembourg participates in Community efforts to promote equality of the sexes. On 22 December 1996, the Council, comprised, for the occasion, of the Ministers for Social Affairs of the 15 States members of the Community adopted the fourth medium-term programme of action for equal opportunities for men and women (1996-2000).

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

1. Draft constitutional amendment

"Women are citizens to the same degree as men. Political incapacity of women just because they are women is a flagrant injustice which we must hasten to remove from our institutions ...". These words were spoken by the central branch in 1919 on the occasion of the debate in the Chamber of Deputies on the draft constitutional amendment. The introduction, in 1919, of women's suffrage - both active and passive - with the amendment of article 52 of the Constitution,[1] was the first step towards the achievement of legal independence for women.

The principle of the equality of men and women before the law, is not stated expressly in the Constitution, although in 1954[2] the Chamber of Deputies did initially consider amending article 11, paragraph 2, of the Constitution to that end; currently it states that "Luxembourgers are equal before the law".

In 1956, members confined themselves to voting for a motion which read as follows: "The constituent assembly notes that the Constitution of Luxembourg does not acknowledge any difference between men and women before the law based on sex; it invites the Government and the legislature to provide for complete equality of the sexes at the legislative level."

However, the Constitution's implicit guarantee of equality between the sexes conceals weaknesses. In a decision of 16 January 1981, in the context of a case concerning equal pay, the Arbitral Tribunal on Social Security dismissed that article saying that "this text is not sufficiently precise with regard to the equality of the sexes from the standpoint of remuneration as to give rise to any rights ...".

Although the principle of non-discrimination is already firmly rooted in a number of international conventions which the Grand Duchy has ratified, it would nonetheless be useful to have that principle expressly included in the Constitution in connection with the Constitutional amendment that is currently being proposed.

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[1] See below under article 7.

[2] Statement concerning amendment made in the Chamber of Deputies, 29 April 1954.

The Commission on Institutions and the Constitutional Amendment has proposed a definition for the principle of non-discrimination. Article 11 (3), which now states that "the State shall guarantee the natural rights of the individual and of the family", would be expanded by adding a second paragraph which would read as follows: "In the exercise of the rights and liberties provided for under this chapter, no one may be disadvantaged or favoured on the basis of their sex, ancestry, nationality, origins or philosophical, religious or political beliefs".[3]

The rights and liberties referred to include, inter alia, the right to work, freedom of trade and industry, trade union freedoms, the exercise of a liberal profession, individual freedom, the right to an education, freedom of expression and freedom of association.

The authors of the text meant to give as precise a definition as possible for the principle of non-discrimination and drew their inspiration from the conventions which the Grand Duchy has ratified.

The Council of State opposed the addition of such a paragraph, deeming it to be too general; it would apply to both nationals and foreigners without distinction, and would be in contradiction with other provisions of this same chapter, such as, for example article 11, concerning admissibility to government employment, the proposed wording of which treats nationals and foreigners differently, or even article 28 which, "while guaranteeing foreigners the benefit of public liberties, subjects them to conditions to be specified under the law."[4]

The Council of State did not comment on the "equality of the sexes" aspect of this definition.

2. Legislative measures to ensure the proper implementation of the principle of the equality of the sexes

Civil law

One of the most important applications of the principle of equality of the sexes is undoubtedly the Act of 12 December 1972 concerning the rights and duties of spouses, which breaks with the principle of marital rights over the wife's person and property. Instead of referring to the wife's duty to obey her husband and seeing the latter as having a dominant role in family life, the law refers to the participation of the spouses "in providing moral and material guidance to the family, in the interest of the latter, contributing to its maintenance, raising the children and helping to establish them". (article 213

[3] Parliamentary document No. 3923.

[4] Parliamentary document No. 3923 (i), pp. 6 and 7.

of the new Civil Code). In addition, it puts an end to the legal incapacity of married women.[5]

This same Act anticipates the reform of marriage settlements which took place in 1974: it gives each spouse the right - a right which cannot be waived - to collect his or her wages and salary and the income from his or her own property and to dispose freely thereof, after having paid the expenses relating to the marriage.[6]

This picture is complemented by the Act of 4 February 1974 which reforms the marriage settlement and eliminates discrimination against married women as regards management of property.[7]

On the whole, the Act of 4 February 1974 put an end to the excessive powers of the husband over assets of the communal estate and removed all special reference to wives, referring only to spouses, thereby giving wives the same managerial powers as husbands. It also did away with dowry settlements[8] and, in the provisions governing agreed marriage settlements,[9] removed any distinction between husband and wife. Thus a woman who opts for the settlement based on separate ownership of property no longer needs to obtain special consent from her husband or authorization from the courts when wishing to dispose of property that is in her name alone.

On a slightly different plane, the Act of 4 February 1974 - which was adopted before the divorce laws were amended - restored equality between the spouses in respect of grounds for divorce. It provides that either spouse, without distinction, may file for divorce on grounds of adultery by the other partner. It thus did away with the situation whereby, in order for adultery to constitute peremptory grounds for a woman to divorce her husband, the man had to be keeping his girlfriend in the conjugal home, whereas any adulterous act on

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[5] See below under article 15.

[6] Article 224 of the Civil Code.

[7] For further details see under article 16. This Act also introduced a new type of marriage settlement under ordinary law, that is to say it applies to couples who have not opted for another settlement in their marriage contract. The new settlement is that of communal estate comprising only property acquired after marriage.

[8] Dowry was defined as "property which the wife brings to the husband to cover the expenses of the marriage" (old article 1540 of the Civil Code).

[9] These are marriage settlements which the spouses opt for in the marriage contract and which derogate from the communal estate settlement. They include, for example, the separation of property settlement and the communal estate comprising all property.

the part of a wife - even an isolated incident - could be cited by the husband when filing for divorce.[10]

Since the Act of 6 February 1975, the parental authority of the husband as head of the family, has been replaced by the parental authority of the father and mother exercised jointly. Parental authority in respect of a child who is born out of wedlock is exercised, in principle, by the mother, even if the father has recognized the child. However, the guardianship magistrate may decide, at the request of either father, mother or government procurator's office, that it should be exercised by the father alone or by both father and mother jointly.[11]

With regard to affiliation, the Act of 13 April 1979 made it possible for a married woman to get around the presumption of paternity of her husband by registering her child in the civil register under her name alone,[12] provided that, in addition, the child has no apparent status vis-à-vis the husband.[13]

The Act of 26 April 1979 concerning inheritance rights considerably improves the position of the surviving spouse; the latter becomes a full heir and is entitled, together with the descendants, to the estate of the deceased. However, the surviving spouse is not a compulsory heir and can be disinherited.

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[10] Since the Act of 5 December 1978 which reformed the divorce legislation there are no longer any peremptory grounds for divorce. As peremptory grounds for divorce, adultery used to lead automatically to divorce once proof of adultery was supplied. Since the reform, adultery committed by either spouse can still be cited by the other when filing for divorce under the new article 229 of the Civil Code which reads: "A person may file for divorce on the grounds of abuse, cruelty or injury by one spouse towards the other where those actions constitute a grave or repeated violation of marital duties and obligations and make continued conjugal life intolerable".

[11] Art. 380, para. 2, of the Civil Code.

[12] Art. 313-1 of the Civil Code.

[13] Pursuant to art. 321 of the Civil Code, apparent status vis-à-vis the husband is determined by "sufficient evidence of filiation and relationship" between the child and the husband's family. The following constitutes evidence:

- The individual has always borne the name of the presumed father;
- The father has always treated him as his child and has always been treated by him as his father;
- The father, as such, has provided for the individual's education, support and establishment.

Penal law

The Act of 11 November 1974 abolished those articles of the Penal Code concerning adultery. As in the case of divorce, women who committed adultery were treated differently from men who did likewise. In order for a husband to incur punishment he had to be found guilty of having kept a girlfriend in the conjugal home, whereas a married woman could be prosecuted for any kind of adulterous behaviour.

The legislation pertaining to abortion was changed by the Act of 15 November 1978 which dealt with sex education and prevention of backstreet abortions and regulated the termination of pregnancy, easing the penalties for abortion.[14]

Law concerning labour and vocational training

A major source of discrimination against women stemmed from the Act of 6 September 1983 concerning access to the Highest Institute of Pedagogical Studies and Research.[15] In fact, there were separate rosters for men and for women seeking to enter the Institute, but since there were a large number of women candidates the result was that women had to be better qualified than their male counterparts in order to have access to training. This discrimination was abolished in 1989.

The specific recognition of equality of treatment in respect of remuneration was assured by the Grand Duchy regulation of 10 July 1974 which anticipated directive 75/177/EEC and was based both on article 119 of the Treaty of Rome of 25 March 1957 establishing the European Economic Community and on ILO Convention No. 100 concerning equal remuneration.[16]

An Act of 8 December 1981 concerning equal treatment of men and women in respect of access to employment, vocational training and advancement, and conditions of work implemented directive 76/207/EEC concerning equal treatment of men and women.

An Act of 17 November 1986 amended the Act of 23 July 1952 concerning military organization, giving women an opportunity to serve as volunteers in the army.[17] This enabled women to apply for a number of jobs which are filled by army volunteers (for example, non-commissioned officers in the army, members of

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[14] Cf. below under art. 12.

[15] This Institute provides training for primary and pre-school teachers.

[16] Adopted by the Act of 17 May 1967.

[17] Art. 8 of the Act of 23 July 1952 concerning military organization which stated that "any male citizen of Luxembourg may serve as a volunteer ..." was amended by deleting the word "male".

military bands, prison guards and officers of the gendarmerie and police force.[18]

Public sector

From the start, the Act of 22 June 1963 setting forth the salary regime for civil servants[19] established that men and women would receive equal treatment as far as remuneration is concerned.

Discrimination in respect of wages relating to the so-called "head of household" allowance remained until the adoption of the Act of 20 May 1983, which replaced that allowance by a "family" allowance.

The public sector also has to abide by the principle of equal treatment set forth in the Act of 8 December 1981 mentioned above.

Social security

The Act of 15 December 1986 concerning the progressive implementation of the principle of equal treatment of men and women in respect of social security amended a whole series of articles of the social security code, bringing them into line with the principle of equal treatment.[20]

The Act of 27 July 1987 concerning old age, disability and survivors' benefits completely overhauled the structure of pensions.[21]

Nationality

Since the Act of 26 June 1975 a woman who is a national of Luxembourg no longer loses her nationality upon marrying a foreigner.

Since the Act of 11 December 1986, a child is a national of Luxembourg if either his father or mother have that nationality. This Act establishes full equality of men and women with regard to the transmission of nationality.[22]

Penalties

The above-mentioned Grand Duchy regulations of 10 July 1974 concerning equal pay of men and women provides as penalty that the discriminatory provision

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[18] Art. 14 of the Act of 23 July 1953 mentioned above, as amended.

[19] Art. 2 of the Act of 22 June 1963 setting forth the salary regime for government officials provides in para. 3: "For equal services, the salary of a female official shall be equal to that of a male official".

[20] See under article 11 below.

[21] See under article 11 below.

[22] See under article 9 below.

shall be automatically invalidated and replaced by the higher remuneration than that referred to in the invalidated provision.[23] [24]

The Act of 8 December 1981 concerning equal treatment of men and women in respect of access to employment, vocational training and advancement and conditions of work provides that an employer, his employees or representatives, or any other person who disseminates or publishes job offers or advertisements which are not consistent with the principle of equal treatment of men and women shall be liable to a fine of [between 10,001 and 100,000][25] francs.[26]

Moreover, pursuant to article 6[27] of this Act, any clause of any contract, regulation or statute that is contrary to the principle of equal treatment of men and women in respect of access to employment, advancement, vocational guidance, training, refresher courses and retraining, or access to an independent profession and conditions of work shall automatically be invalid.

In order to protect a worker who reacts to discrimination from reprisals by his employer, article 8 of the Act of 8 December 1981 characterizes as improper "any dismissal, the primary reason for which is based on the employer's reaction to:

- a well-founded complaint filed either with the enterprise or private or public service where he is employed, or with the General Inspectorate of Labour and Mines;[28]

- an intervention by the General Inspectorate of Labour and Mines;

- legal proceedings designed to enforce the principle of equal treatment in the areas recovered by the present Act".

The Act thus does not give the judge authority to determine whether such dismissal is improper. His role is simply, at the request of the worker, to order the employer to pay damages,[29] bearing in mind the injury sustained by the worker on account of his being dismissed. In ruling on the damages to be paid to the employee, the court may, if the employee so requests during the proceedings and if it deems that the conditions for a continuation or resumption

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[23] Article 4 of the above-mentioned Grand Duchy regulations.

[24] See under article 11 below.

[25] The schedule of fines has been increased by the Act of 13 June 1994 concerning penalties.

[26] See under article 11 below.

[27] Combined with article 1 of that same Act.

[28] See under the heading "Legal Protection" below.

[29] See article 29 (1) of the Act of 24 May concerning the labour contract.

of working relations have been met, recommend that the employer agree to take back the employee to make up for the improper dismissal. If he agrees to take the worker back without loss of seniority the employer is released of any obligation. However, if he refuses to do so, he may be ordered to pay compensation equal to one month's wages or salary, in addition to the above-mentioned damages.

Similarly, the Act of 3 July 1975 concerning the protection of pregnant women at work[30] states in article 14 that any infringement of the provisions of articles 3,[31] 4,[32] 5,[33] 6,[34] 7,[35] and 10,[36] shall be punishable by imprisonment of between eight days and three months and a fine of [501 to 50,000][37] [francs].

A recent bill, No. 4071, which complements the Penal Code and classifies racism, revisionism and other behaviours based on discrimination as illegal, also provides for penalties for a series of behaviours which fall within the scope of the present Convention.[38]

Thus anyone who makes a malicious charge against an individual on the grounds of their sex, which charge is likely to attack the individual's honour or to expose them to public scorn, shall be liable to a sentence of one month to one year in prison and a fine of 10,001 to 1 million francs.[39]

Such behaviour shall be characterized as intentional defamation if proof of the charge is not provided even though the law permits the charge to be proved. It shall be termed defamation if the law does not permit the charge to be proved. The victim of defamation or intentional defamation based on

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[30] See under article 11 below.

[31] Maternity leave.

[32] Ban on night work for pregnant women.

[33] Ban on certain types of work for pregnant women.

[34] Obligation for the employer to provide another assignment at the same salary.

[35] Ban on overtime for pregnant women.

[36] Ban on breaking a contract with a woman wage-earner who is pregnant, obligation to hold the job for a woman who is on maternity leave, prohibition of dismissing a woman because she has married.

[37] This amount should be multiplied by 20 following successive increases in the schedule of fines.

[38] Decree of the Grand Duchy filed on 3 July 1995.

[39] Article 444, paragraph 2, as proposed in Bill No. 4071, read in conjunction with article 443 of the Penal Code.

considerations of sex (or other discriminatory grounds[40]) shall not be required to provide evidence of the fact that the charges have been made public, unlike a victim of defamation or intentional defamation based on considerations other than those listed in proposed article 454 of the Penal Code. The penalty provided for is also heavier: the minimum term of imprisonment is one month instead of eight days, the maximum one year.

Furthermore, the proposed text of article 454 of the Penal Code reads as follows: "Discrimination as defined in article 454, when committed against a natural or artificial person, a group or community of persons, shall be punishable by imprisonment from eight days to two years and/or a fine of from 10,001 to 1 million francs, where the discrimination consists of:

1. Refusing to provide a good or service;

2. Making provision of a good or a service conditional on one of the elements referred to in article 454, or discriminating in any other way when providing the good or service, on the basis of one of the elements referred to in article 454;

3. Indicating in an advertisement an intention to withhold a good or service or to practice discrimination in connection with the provision of a good or service, on the basis of one of the elements referred to in article 454;

4. Obstructing the normal exercise of any economic activity;

5. Refusing to hire, to punish or to dismiss an individual;

6. Subjecting a job offer to a condition based on one of the elements referred to in article 454."

A separate article[41] establishes a penalty of imprisonment from one month to three years and/or a fine of 10,001 to 1,000,500 francs for discrimination, as defined in proposed article 454 of the Penal Code, by an individual vested with public authority or entrusted with a public service mission, in the exercise, or in connection with the exercise, of his duties if such discrimination consists of:

1. Withholding enjoyment of a right granted under the law;

2. Obstructing the normal exercise of any economic activity.

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[40] According to the proposed article 454 of Penal Code "any distinction made between natural persons on the grounds of their origins, sex, family status, health, handicap, habits, political views, trade union activity, or on the grounds that they belong or do not belong, or are alleged to belong or not to belong, to a given ethnic group, nation, race or religion, shall constitute discrimination" (proposed article 454).

[41] Proposed article 456 of the Penal Code.

Pursuant to article 457 of the Penal Code, as proposed, the provisions of articles 455 and 456 would not apply to discrimination provided for under a law or a regulation.

Finally, article 457-1 of the Penal Code, as proposed, states:

"A penalty of imprisonment from eight days to two years and a fine of 10,001 to 1 million francs, or either one of the above penalties shall be applied to:

(1) Anyone who by speeches, shouts or threats proffered in public places or meetings, or by written works, printed matter, drawings, etchings, paintings, emblems, pictures or any other written, spoken or pictorial aid, sold or distributed, offered for sale or displayed in public places or meetings, either by posters or notices displayed for public view, or by any means of audiovisual communication, incites to the acts referred to in article 455, to hatred or violence against a natural or artificial person, group or community on the basis of one of the elements referred to in article 454;

(2) Anyone who belongs to an organization whose goals are to commit or whose activities involve committing one of the acts provided for in paragraph 1 of this article;

(3) Anyone who prints or causes to have printed, produces or is in possession of, transports, imports, exports, causes to have produced, imported, exported or transported, puts into circulation in the territory of Luxembourg, sends from the territory of Luxembourg, gives to the postal service or to any other professional responsible for distributing mail in the territory of Luxembourg, causes to pass in transit through the territory of Luxembourg, written works, printed matter, drawings, etchings, paintings, posters, photographs, cinematographic films, emblems, images or any other written, spoken or pictorial aids likely to incite to the acts referred to in article 455, to hatred or violence against a natural or artificial person, a group or community, on the basis of one of the elements referred to in article 454.

The articles listed above shall in any event be confiscated."

This text is likely to be applied especially in regard to incitement to violence. Thus, for example, this provision may be invoked against anyone who produces, imports or is in possession of pornographic films containing scenes of sadism towards one woman or women.

3. Legal protection

Women and men have equal access to the courts of Luxembourg. Under the Act of 12 November 1971, women have full legal capacity to go to court, as do men.

With regard to labour legislation, special protection is provided for both female workers and male workers. All employers, enterprises or establishments

with wage-earning workers are under the supervision of the General Inspectorate of Labour and Mines. The latter sees to the implementation of the provisions of statutes, regulations, administrative rules and agreements governing conditions of work and protection of workers in the exercise of their trade.[42]

It notes the violations it finds in a report which it places in the hands of the State prosecutor with a recommendation that he prosecute, unless it deems that it would be more appropriate to issue a warning or simply give advice.[43]

There are two mechanisms which are designed to guarantee to all parties access to the courts.

The reception and legal information service which operates in the courts and for which there is no charge. It is supplemented by a service intended specifically for women's rights; it, too, is free of charge.

Legal aid. It is accorded equally to men and to women. In practice, especially in matters of divorce, more women than men benefit from this institution: this is a direct consequence of the economic dependence of many married women on their husbands. Anyone whose income is too low for them to be able to afford a lawyer can go to the president of the Bar Association who will assign them counsel. Since such counsel is paid only a stipend by the State, persons without resources are generally defended by young trainee lawyers who have little experience.

Although women are thus ensured access to the courts equally with men, it is just as important that the courts should apply the principle of non-discrimination between the sexes to the full extent.

With regard to direct discrimination against women, the courts have found, with regard to remuneration, that discrimination can be said to exist if male and female workers occupying identical or comparable posts are, without objective reason, treated differently.

As for indirect discrimination, the Supreme Court of Luxembourg in a decision of 14 April 1994 found:

> "That although citizens of Luxembourg and refugees alike must have resided for at least 10 years out of the previous 20 years in the territory of Luxembourg in order to be able to benefit from the guaranteed minimum income, in practice this requirement creates inequality of treatment between citizens of Luxembourg and refugees normally residing in the territory of Luxembourg since the latter can never or - at least hardly ever - meet that condition as they have had to flee their country of origin in order to find refuge in the Grand Duchy;

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[42] Article 1 of the Act of 4 April 1974 reorganizing the General Inspectorate of Labour and Mines.

[43] Article 18 of the above-mentioned Act of April 1974.

"That the provision of article 2 (1) of the Act of 26 July 1986 concerning the 10-year's residence requirement, as amended, is not in accordance with article 23 of the Convention of 28 July 1951 and cannot be applied to refugees normally residing in the territory of the Grand Duchy."[44]

Thus the Court agreed in one isolated case with the judicial precedent of the Court of Justice of the European Communities which in one decision[45] concerning maternity benefits and residence ruled against Luxembourg because certain residence requirements under the law were deemed contrary to the provisions of the Treaty.

It is quite likely that, in following the policy adopted in that decision of the Supreme Court, the courts will declare discriminatory the provisions of any regulations and agreements in respect of labour legislation that require all workers, without distinction, in order to enjoy a certain treatment, to meet a seemingly neutral requirement that women workers could hardly ever meet. In fact, the above-mentioned Act of 8 December 1981 states in article 2: "The principle of equality of treatment for the purposes of the provisions of the present Act implies the absence of any discrimination based on sex, whether direct or indirect, by reference particularly to matrimonial or family status". It is less certain that this broad definition of discrimination would be accepted in connection with a specific case falling outside the scope of the Act of 8 December 1981 and in which the plaintiff invoked article 11 (2) of the present Constitution, or the proposed article 11 (3), since these provisions do not refer specifically to indirect discrimination.

Furthermore, it should be pointed out that the courts in Luxembourg deem themselves competent to apply the provisions of international treaties directly, presuming that the provisions are sufficiently precise and comprehensive. Hence, it is not always necessary for the legislator or the regulatory power to intervene in order for such provisions to take effect. Furthermore, it is the practice of the courts of Luxembourg, where there is a conflict between international rules and domestic rules, to recognize the international rules that are directly applicable as having primacy.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

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[44] Pasicrisie luxembourgeoise, No. 1/1995 (vol. XXIX), p. 332.

[45] CJCE 20 March 1993 Commission vs. Luxembourg C-111/91 Rec-p 1-817.

1. The national mechanisms responsible for promoting equality of opportunity for men and women are as follows:

1.1. Ministry for the Advancement of Women

In February 1995, the Ministry for the Advancement of Women was established; it takes over the responsibilities of the Department for the Enhancement of the Status of Women which was under the Ministry of the Family and Solidarity.

Prior to that time, the Department promoted, at the level of the Ministry of the Family and Solidarity, actions designed to improve the situation in the various lifestyles chosen by women. In order to do so the Department had, as does the Ministry for the Advancement of Women today, the support of private organizations whose goal it is to assist women in specific situations. Moreover the Department sought to stimulate and, if necessary, support and harmonize the initiatives on behalf of women taken by other actors concerned with equal opportunities - the other ministerial departments, social partners, women's associations, private associations.

The creation of the Ministry for the Advancement of Women reflects the Government's wish to demonstrate the importance it attaches to the policy regarding the advancement of women. At the same time, it was necessary in order to emphasize that that policy was separate from the family policy. The powers of the Ministry for the Advancement of Women are both horizontal and vertical. It thus alternates between reviewing bills prepared by other ministries which affect the status of women and drafting bills itself. Among the bills which it will prepare or complete in the near future is one relating to the introduction of family leave, one concerning sexual harassment at the workplace and one relating to the designation of a labour delegate for women in companies of a certain size.

Other specific goals, which do not necessarily require the intervention of the legislative power, include extending aid to women in need and strengthening measures to assist in the professional reintegration of women who so desire it.

The Ministry for the Advancement of Women is assisted in the accomplishment of its task by the "Interministerial Committee: advancement of women" which is made of up representatives of all the ministries. It is responsible for advising the Minister for the Advancement of Women and proposing concerted actions. The interministerial committee has been in operation since July 1995 and meets every month and it should make it possible to mainstream the gender perspective into all national policies.

1.2 The Women's Labour Committee

The Women's Labour Committee has been operating since 1980 and was made official by the Grand Duchy regulation of 27 November 1984 establishing a women's labour committee. It is an advisory body which is responsible for considering, either on its own initiative or at the request of the Government, all matters relating to the professional activity, training and advancement of

women. It is empowered to propose "any actions which it deems likely to improve the situation of women".[46]

The 20 members of the Committee include:

Four representatives of women's associations proposed by the National Council of Women of Luxembourg (see below);

Four representatives of employers' professional organizations;

Four representatives of the most representative trade union organizations at the national level;

Eight representatives of the Government.[47]

Since it was established, the Committee has issued some 30 opinions which have been widely disseminated. These opinions may be found in the Parliamentary papers, as can opinions of the business chambers which relate to a bill.

1.3. The National Council of Women of Luxembourg (CNFL)

The National Council of Women of Luxembourg, which was established in 1975, is a non-profit organization comprising a group of federations, associations and representative organizations who have as one of their social aims to defend and advance women's interests. In order to be a member an association must:

- either be constituted under the laws of Luxembourg,
- or be the women's organization of a political party represented in the Chamber,
- or be the Luxembourg branch of an organization recognized by the United Nations or the Council of Europe.

For the time being, CNFL has 11 members.

As noted earlier, CNFL is represented in the Women's Labour Committee and therefore helps to formulate the latter's opinions. Furthermore, CNFL follows political, economic and social developments closely and does not hesitate, on occasion, to communicate its position to the President of the Chamber of Deputies.[48]

Furthermore, it manages a women's shelter, the Foyer Sud Fraen an Nout.

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[46] Article 2, para. 2, of the Grand Duchy regulation establishing a women's labour committee.

[47] Article 3 of the above-mentioned regulation.

[48] As in the case of the bill concerning the registration of women on the electoral lists under their own name (cf. below under article 16).

With the support of the European Commission, on 8 March 1995, CNFL, acting in collaboration with the Luxembourg branch of the European network "Women in Decision Making", launched a campaign to promote a communal policy of equal opportunities for men and women, which was supported by the Union of Cities and Communes of Luxembourg (SYVICOL) and the Ministries for the Advancement of Women, Labour and the Interior. In the brochure describing this campaign which was distributed to the communal councils of the 118 communes in Luxembourg, CNFL invited the communes to:

appoint a member of the communal council (the burgomaster, an alderman or member of the council, either man or woman) who would be responsible for promoting equal opportunities in his commune;

appoint an advisory commission on equal opportunities at least half of whose members would be women;

consider establishing an equal opportunities office in the major communes.

The communal body on equal opportunities thus appointed will take steps to:

1. Promote balanced participation by women in consultative organs of the commune and in the various administrative and management organs;

2. Promote equal opportunities for girls and boys at school and outside;

3. Promote various types of child-care;

4. Promote the integration of socially disadvantaged women; and

5. Combat all forms of violence against women and children.

The campaign has been relatively successful: some 38 communes have appointed one or more officials. In order to give the campaign a further boost the Ministry for the Advancement of Women has undertaken, after consulting with CNFL and SYVICOL (the union of cities and communes of Luxembourg), to provide more substantial leadership. Accordingly, it will present a kind of "practical guide" to measures, from which communes that wish to embark on a policy of equal opportunities may choose freely, bearing in mind their specific situation.

1.4. The Liaison, Discussion, Action Group (LIDIA)

The LIDIA group is a kind of parallel women's organization consisting of 11 sub-organizations. It is a flexible structure that was established fairly recently; it prepares positions and organizes actions to increase public awareness regarding equal opportunities in the political, economic and social areas and, more particularly, in areas relating to women's employment. It also organizes seminars dealing, inter alia, with matters relating to the labour market and the individualization of women's rights in the context of social security.

2. International machinery

The Minister for the Advancement of Women represents Luxembourg at the various international conferences dealing with the improvement in the status of women. The Ministry for the Advancement of Women also participates in the work of the various international committees at the level of:

The United Nations: Commission on the Status of Women and Economic and Social Council;

The Council of Europe: Steering Committee for Equality Between Men and Women (CDEG); and

The Commission of the European Union: Advisory Committee on Equal Opportunities for Women and Men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

The Act of 8 December 1981 concerning equality of treatment for men and women as regards access to employment, vocational training and advancement, and working conditions provides in article 2 (3) that "provisions of statutes, regulations or administrative rules concerning the protection of women, including in respect of pregnancy and maternity, and measures designed to promote equal opportunities for men and women, in particular by remedying the de facto inequalities which affect women's opportunities in the areas referred to in article 1 (employment, training, advancement, retraining ...) shall not be considered as contrary to the present Act".

A round-table meeting in April 1995 on the subject of the negotiation of positive plans of action, in which representatives of the National Council of Women of Luxembourg, the Women's Labour Committee, various trade unions and the positive actions unit of the Belgian Ministry of Labour participated, made it possible to exchange information and experience at the national and international level.

In October and November 1995, the Minister for the Advancement of Women organized a series of meetings with representatives of business chambers, employer and trade union organizations with a view to finding out which firms would agree to carry out positive actions and encourage possible initiatives.

Examples of positive actions are the exception rather than the rule: there are two cases of initiatives taken in the field of the organization of work and training.

Ateliers Reichert in Holzem

In 1993, Ateliers Reichert, a workshop dealing with fine metals, was awarded the Women's prize for enterprises[49] which, at the time was awarded by the Ministry of Labour, for innovative measures designed to promote the employment of women. Ateliers Reichert are noteworthy for their extreme flexibility as regards the organization of work in order to enable their staff, particularly their female staff members, to reconcile their family responsibilities with their on-the-job responsibilities. Unpaid leave is granted, upon request, for family reasons, continuing training or for additional free time; employees doing certain administrative tasks are given an opportunity to work at home. In addition, staff who are having personal problems can have access to social support.

Fondation J. P. Pescatore

Fondation J. P. Pescatore is an old people's home which offers two years of training to workers on the bottom rung of the ladder; the training is related to real opportunities for promotion and social advancement. Women having no vocational qualification can participate while in training on the job; the training includes an introductory course comprising a minimum of 30 hours training and a more advanced course comprising at least 30 hours of theory and technical training, 30 hours of practising what they have learned, under supervision, and 40 hours of practical training outside the Fondation; their performance is evaluated on a continuing basis.

People who successfully complete the training are awarded a certificate by the Fondation; this entitles them to more varied and more status-enhancing work, the title of senior hostess, a uniform in recognition of their new status, higher wages and possibilities for advancement.

Among the three most representative trade unions in Luxembourg only OGB-L[50] and LCGB[51] have a "Women's Department".

In 1993 OGB-L adopted a programme for the advancement of women, thereby breaking new ground for, as yet, there is no collective agreement containing a comprehensive plan for measures to promote equal opportunities.

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[49] See below under article 11.

[50] "Onofhängege Gewerkschaftsbond-Letzebuerg" which means Confederation of Independent Trade Unions of Luxembourg.

[51] LCGB which is the abbreviation for "Letzebuerger Chreschtlechen Gewerkschaftsbond" means Confederation of Christian Trade Unions of Luxembourg.

The Women's Department of LCGB is a recently established department within the trade union. In 1994, the post of trade union secretary was given to a woman for the first time. A programme of action will be proposed to the next congress early in 1996.

Within the context of its campaign to promote a communal policy of equal opportunities for men and women referred to earlier, the National Council of Women of Luxembourg has called for the "balanced participation, in terms of numbers, of men and women in communal advisory organs and in the various administrative and management organs.[52]

In addition, the Government has assigned the Ministry for the Advancement of Women the task of preparing a legal framework for the establishment of a plan to promote the employment of women in the public sector.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

(a) Elimination of prejudices

The Government of Luxembourg realizes that it is of crucial importance to change people's outlook and eliminate prejudices, since much discrimination has its roots in prejudice. At the same time, the Government is realistic: such changes cannot be imposed from above but must have popular support. Most women living in Luxembourg are not engaged in paid employment.[53] In the light of this information, that is to say the traditional division of roles, it can be assumed that it will take a long time for people's outlook to change. However, more and more women are joining the workforce and this promises to bring about profound changes in society.

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[52] Brochure entitled "Promoting a communal policy of equal opportunities for men and women" published by CNFL early in 1995, p. 6. See also p. 13 of the brochure and the recent leaflet entitled "Can you imagine a world in which men accounted for 90 per cent of the population and women for 10 per cent?"

[53] See below under article 11.

The Government recognizes that the media, while playing an important role in perpetuating traditional patterns of behaviour, can also be a powerful force for changing attitudes. Accordingly, the Minister for the Advancement of Women plans to launch, within the context of a campaign entitled "Women in the media", a positive effort to promote women by resorting to collaboration with the organs of the media. The need for such a campaign was recently confirmed by an illustration that appeared in a weekly publication devoted to personal ads; it depicted a prehistoric man, cudgel in hand, standing in front of a kneeling woman and saying (translated from the German): "A woman should be beaten and, if need be, killed". The Minister for the Advancement of Women protested to the editor in question and filed a complaint. An official apology was submitted. The problem, however, is that such attacks on women's dignity may pass unnoticed and that absence of any reaction is interpreted as acquiescence. Accordingly, a consciousness-raising campaign for the media seems very much in order.

Consciousness-raising sessions have been conducted from time to time in the past. For example, the Ministry of the Family and Solidarity published two brochures entitled "Women in the Grand Duchy of Luxembourg". The first, which was issued in 1992, is subtitled "Demography and families", the second is subtitled "Equal opportunities for men and women".

The new Ministry for the Advancement of Women will intensify these consciousness-raising efforts: one leaflet is currently being prepared on the topic of equality of the sexes in general. Others on specific topics will follow.

In addition, the Ministry for the Advancement of Women plans to conduct a survey, in 1996, of women who have no paid employment, with a view to making known their aspirations, occupations, qualifications, if any, and their plans for the future. The purpose of this undertaking is to put a value on their work as homemakers, educators, caregivers and in many cases, their volunteer work.

There is also a project relating to dissemination of the Convention on the Elimination of All Forms of Discrimination against Women that is being prepared. Students in the fine arts section of the Technical Lycée of Arts and Trades were assigned the task of taking photos to illustrate the text of the Convention; the latter will be presented, with the photos, in a brochure - or possibly even an extra handbook - which will be used in civics courses in the secondary schools.

In 1991 the group "Gréng Fraën"[54] published a brochure on pornography with a bill concerning the production, propagation and utilization of pornographic representations prompting discussion of the image of women in the media.

Regarding, more specifically, patterns of behaviour which involve acts of violence against women, it seems a good idea to give the legal background. It applies not only to female victims but to all cases of violence, whether the victim is a man or a woman.

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[54] "Green Women".

Sexual assault is covered by articles 372, 373, 375 or 385 of the Penal Code.[55]

The first provision establishes a penalty of between six months and five years in prison for indecent assault committed with violence or threats on persons of either sex, or committed on persons who are not in a position to give their consent freely or to put up any resistance. It provides for imprisonment between 5 and 10 years if such an assault is committed on a child who is under 14.

Indecent assault committed without violence or threats is punishable, according to this characterization, only if it is committed on, or with the help of, a person of either sex who is under 16 years of age: the penalty provided for is imprisonment for one to five years (article 372 of the Penal Code). Indecent assault committed without violence or threats on a person aged 16 or over can be punished only as a public act of indecency (article 385 of the Penal Code) and carries with it a penalty of eight days to one year in prison and a fine of from [26 to 500][56] francs.

In the practice of the courts, indecent assault is defined as "a physical action contrary to the ordinary sense of decency, committed on another person against their will".[57]

The violence and threats required under article 373 of the Penal Code are described, respectively, as an act of physical coercion exercised on a person and as any means of non-physical coercion through fear of imminent harm.[58] A little violence is enough.[59]

A charge of indecent assault on persons who are "not in a position to give their consent freely or to put up any resistance" is deemed established when "the assault is committed on persons who, as a result of machinations and manoeuvres employed by the perpetrator of the assault, were not in a position to give their consent freely".[60]

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[55] See enclosed texts.

[56] These two amounts, following successive increases in the scale of fines, should be multiplied by 400.

[57] The High Court of Justice ruling on appeal, decision of 4 June 1987, No. 197/87.

[58] See in particular the decision of 6 December 1990, No. 170/90 of the High Court of Justice ruling on appeal in Council Chamber.

[59] Ibid.

[60] High Court of Justice, ruling on an application for judicial review, decision of 11 July 1963, Pasicrisie luxembourgeoise, No. XIX, p. 155.

Similarly, "absence of consent or inability to resist is sufficient grounds for applying the first paragraph of article 373".[61]

Just because an individual "knowingly cooperated in the inevitable in order to lessen the danger resulting from the aggression of the perpetrator of the rape or indecent assault" they "shall not be considered to have consented, and the accused who has taken advantage of such a person under such circumstances shall nevertheless be considered guilty of rape or of indecent assault".[62]

Indecent assault does not necessarily have to include touching:[63] the perpetrator does not need to have laid hands on the victim's private parts.

It is clear from the foregoing that acts of sexual aggression seldom fall under the more moderate provision of article 385 of the Penal Code, which provides merely for imprisonment of between eight days to one year and a fine of between [26 and 500][64] francs. In fact, this provision covers any public act of indecency and is not limited only to indecent assault on a particular individual. Thus, for example, exhibiting obscene photographs of a pornographic nature in a public place has been deemed to be a public act of indecency.[65]

For a long time the only form of sexual penetration characterized as rape was vaginal penetration by a male organ. Prior to the entry into force of the Act of 10 August 1992 concerning protection of youth, which introduced the aforementioned definition, article 375 of the Penal Code read as follows: "Anyone who has committed the crime of rape, either by using violence or strong threats, or by ruse or artifice, or by taking advantage of someone who is not in a position to give their consent freely or to put up any resistance, shall be punished by imprisonment. If the crime is committed against a child who is less than 14 years old, the accused shall be sentenced to hard labour from 10 to 15 years". The term "rape" was not defined, and although it was possible to adapt the term "rape" to sociological realities, that is to say to take account of present-day sexual practices, there was a reluctance to do so; in most cases the only act characterized as rape was that ultimate violation of the person which is likely to result in pregnancy.[66] Oral and anal penetrations forced on a person, whether male or female, were, at most, punishable as indecent

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[61] Above-mentioned decision of 6 December 1990.

[62] Cf. the judgement of 7 October 1992, docket No. 1161/92, Criminal Chamber Docket No. 17/92 of the Circuit Court of Luxembourg.

[63] Circuit Court of Luxembourg, judgements of 3 April 1990, docket No. 590/90 and 4 July 1991, docket No. 1328/91.

[64] This figure should be multiplied by 400, following successive increases in the scale of fines.

[65] Circuit Court of Luxembourg, 7 July 1988, docket No. 1195/88.

[66] See, for example, Circuit Court of Luxembourg, 19 June 1989, No. 82.

assaults. The Act of 10 August 1992 concerning the protection of young people[67] defines rape as follows: "Any act of sexual penetration, of whatever nature and by whatever means, committed on another person, whether by means of violence or grave threats, by ruse or artifice, by taking advantage of a person who is not in a position to give their consent freely or to put up any resistance, constitutes rape and shall be punished by imprisonment."

The presumption of absence of consent when the victims is under the age of 14, which is provided for in article 375, paragraph 2, was introduced on the same occasion in the light of a departure from established practice,[68] which sought to require that it be determined in each specific case whether or not a child under 14 had consented to having sexual relations. Likewise, the age of a victim of indecent assault without violence or threats, covered by article 372 of the Penal Code, was raised from 14 to 16 years and article 372 bis of the Penal Code was repealed. The latter had dealt with indecent assaults committed without violence or threats by an adult on a person of the same sex under 18; in other words, where homosexual acts were involved, protection of minors extended beyond the age of 14 years. In this respect the Penal Code discriminated therefore both in respect of homosexual perpetrators and in respect of victims of heterosexual acts who were over 14.

Finally, it should be pointed out that there is no provision dealing specifically with rape committed by a husband against his wife. For a long time judicial practice considered that there was no such thing as rape within marriage, given that sexual relations are one of the aims of marriage. That is no longer the case; a wife may, indeed, invoke article 375 of the Penal Code,[69] but often runs into difficulties when it comes to proving absence of consent.

Ill-treatment of women other than sexual aggression falls within the scope of provisions concerning homicide and intentional bodily injury, that is to say, articles 392 and following of the Penal Code.

As far as figures are concerned, in 1994, there were 120 cases involving public morals reported to the police, of which 28 were rapes, 49 were indecent assaults and 46 were public acts of indecency. It seems that the real figures are higher: the three family planning centres (located in Luxembourg, Esch-sur-Alzette and Ettelbruck) were consulted about 242 rapes during the same period. Although these figures are not broken down according to the sex of the victim, it is well known that men are seldom victims of rape. Moreover, the statistics concerning battery are not broken down according to sex, making it difficult to determine the extent of the problem of violence against women.

The State of Luxembourg has signed agreements with private organizations which run women's shelters, whereby these organizations receive financial

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[67] See annexed text.

[68] Decision of 11 March 1991 of the High Court of Justice, ruling on appeal.

[69] See, for example, the decision of 21 June 1994, No. 223/94(-V) of the High Court of Justice, ruling on appeal.

support from the State. There are 120 beds available for women in various situations: battered women, women who have been sexually abused, pregnant women. The number is constantly being increased in the light of needs. A shelter for young girls is to open some time in 1996. An information centre for young girls has been operating since October 1995. It provides shelter to young girls who have been ill-treated, either sexually, physically or mentally.

The family planning centres also propose to provide shelter and support for rape victims,[70] as well as individual and group therapy.

Private organizations have taken many initiatives: awareness-raising campaigns, brochures, lectures, colloquiums. In January 1992, several organizations formed a working group against sexual abuse and launched a vast campaign against sexual abuse, putting on exhibitions, lectures and plays. This campaign was very successful and received much press coverage.

In March 1993, the Ministry of Labour launched a campaign against sexual harassment which was funded jointly by the European Commission. The basis for this campaign was a survey on sexual harassment in the workplace, carried out by the Luxembourg Institute of Social and Market Research (ILRES) and financed by the Ministry of Labour; it found great resonance in the press and the news media.

On 7 October 1993 the Ministry of the Family, in collaboration with the Ministry of Justice, the National Council of Women of Luxembourg and representatives of the women's shelters and of the "Rape info" service of the Luxembourg Movement for Family Planning and Sex Education,[71] launched a campaign to combat violence against women. In the context of this campaign a poster was printed and distributed together with an information booklet entitled "Breaking the silence" on assistance in the event of violence towards women. The poster and the booklet (which was published in three languages, French, German and Portuguese) were widely disseminated through local government offices, social services, hospitals, doctors' offices. Training days and information meetings were organized for State and local police officers. The training of such officers now includes a segment on women victims of violence.

In April 1995, officials in charge of the PETRA project L-31[72] the Chamber of Trades organized a forum on equality of opportunities in training and employment which included lectures/debates on equality of opportunity in education and on the promotion of equality of opportunity between men and women in the workplace.

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[70] The "Rape info" service.

[71] The Luxembourg Movement for Family Planning and Sex Education a.s.b.l. is formed by three regional family planning centres (Luxembourg, Esch-sur-Alzette, Ettelbruck).

[72] See below under article 10.

(b) Family education

The Minister for the Advancement of Women believes that children learn at a very early age how responsibilities are divided in the home. She therefore plans to launch pilot projects at the pre-school level where, using play activities, boys will learn about housework and child-rearing and girls will learn about technology.

Politicians - both men and women - have spoken repeatedly about the importance of dividing family responsibilities equally, and this principle has for several years been outlined also in the information booklets for families published by the Ministry of the Family. However no large-scale activity has yet been undertaken on this specific issue.

Article 6

States parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

In Luxembourg prostitution as such is not punishable but its outward manifestation is. Article 382 of the Penal Code was introduced by the Act of 1 April 1968 which sought to eliminate the official regulations pertaining to prostitution and to strengthen the fight against prostitution and procuring; it establishes soliciting as an offence: "Anyone who by gesture, words, writings or any other means seeks publicly to solicit persons of either sex with a view to inciting them to prostitution shall be punished by a prison term of from 8 days to 6 months and a fine of from [10,001 to 200,000] francs.[73]

That same Act amended article 563 of the Penal Code which establishes a penalty for certain behaviour in order to punish people "whose attitude on the public thoroughfare is of a nature to incite to prostitution". The legislator at the time saw these as "manifestations that were contrary to public order".[74]

Moreover, the Act of 1 April 1968 did away with the regulations pertaining to prostitution, as required by article 6 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others which was opened for signature at Lake Success, New York, on 21 March 1950 and

[73] Amount as increased in accordance with the Act of 13 June 1994 concerning the scale of penalties.

[74] Parliamentary document No. 1150, explanatory introduction to the bill.

which the Grand Duchy signed on 9 October 1950.[75] According to the drafters of the bill, "Considerations of human dignity are incompatible with the maintenance of such a system of regulation."[76] They also stated that "By condemning the prostitutes who are subject to police control and marking them with the indelible seal of their degradation, the regulations deprive the unfortunate prostitutes of any opportunity to rehabilitate themselves."[77]

Articles 379 and 379 bis of the Penal Code refer to the exploitation of prostitution and the traffic in women.

Article 379 bis states:

"A penalty of between six months and three years' imprisonment shall be imposed on:

"1. Anyone who in order to satisfy another's passions, hires or seduces a person or leads them astray, even with their consent, for purposes of prostitution or vice, either in the territory of the Grand Duchy or in a foreign country;

"The attempt shall be punished by between three months and two years if the victim was hired, seduced or led astray through deception, with the assistance of violence, threats, abuse of authority or any other means of coercion or, if the victim has indeed engaged in prostitution or vice, the prison term shall be from one year to five years;

"If two of the above-mentioned circumstances applied, the deed shall be punishable by imprisonment [from 5 to 10 years];

"2. Anyone who owns, directly or through an intermediary, manages, directs or operates a brothel;

"3. Any landlord, hotelier, manager of a lodging house, cabaret owner or, in general, anyone who surrenders, rents or makes available to another or who tolerates the utilization of all or part of a building, knowing that the premises surrendered, rented or made available are being used for the exploitation of the prostitution of another;

"4. The procurer."

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[75] Luxembourg is also a party to the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904; the International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910; the International Convention for the Suppression of the Traffic in Women and Children of 30 September 1921; the International Convention for the Suppression of the Traffic in Women of Full Age of 11 October 1933.

[76] Parliamentary document No. 1150, explanatory introduction, p. 8.

[77] Ibid.

The Act gives a very long list of persons who should be considered procurers:

"A procurer is anyone who:

"(a) In any way helps, assists or knowingly protects prostitution or soliciting for purposes of prostitution;

"(b) Anyone who in any way shares the proceeds of the prostitution of another or receives subsidies from a person engaged in prostitution;

"(c) Who lives with a person who habitually engages in prostitution knowing that this is so;

"(d) Who, having frequent contact with one or more persons engaged in prostitution cannot give proof of resources corresponding to his lifestyle;

"(e) Who hires, seduces or keeps a person, even an adult and even with the latter's consent, for purposes of prostitution or hands them over to prostitution or vice;

"(f) Who acts as intermediary, in any capacity whatsoever, between persons engaging in prostitution or vice and the individuals who exploit or remunerate the prostitution or vice of others;

"(g) Who, by threats, pressure, manoeuvres or by any other means, impedes the efforts of qualified agencies to dissuade, supervise, assist or rehabilitate persons who engage in prostitution or who are in danger of doing so."

This extremely broad definition of procuring can be explained by the fact that it is exceedingly difficult to prove that the proceeds of prostitution have, indeed, been shared.

Before the entry into force of the Act of 1 April 1968, procuring was not covered by the Penal Law. It was felt, on the one hand, that procuring was practically non-existent in Luxembourg and, on the other hand, that it was not necessary to pass special laws since procurers seldom operated "on public thoroughfares or in public places to assist in soliciting or in the practice of prostitution".[78] The authors of the draft bill which, after certain amendments, was to become the Act of 1 April 1968, stated, however, that "even though these individuals do not operate in public places, the Penal Law must punish them severely for they are nearly all layabouts who do not earn any income by reputable means, and are therefore essentially asocial or anti-social elements. They often terrorize the women who are under their control and make their lives a living hell and are major obstacles to the rehabilitation of such women. They

[78] Parliamentary document No. 1150, explanatory introduction, p. 10.

often assist white slave traffickers and manage brothels, and many of them have ties to organized crime."[79]

Minors are given added protection. The last paragraph of article 379 bis of the Penal Code provides for heavier penalties if the victim is a minor. In addition, article 379 states:

"A penalty of one to five years in prison shall be imposed on:

"Anyone who, in order to satisfy the passions of another, has excited, facilitated or encouraged the vice, corruption or prostitution of a young person under 21 years of either sex, knowing that the person was under age;

"If, due to his negligence, he was unaware that the individual was under age, the punishment shall be imprisonment from six months to three years;

"(...)

"The act shall be punishable by imprisonment from two to five years if it was committed on a minor under 14 years of age, and by imprisonment at hard labour if it was committed against a minor under 11 years of age;

"(...)"

In addition, if the guilty party is someone with influence over the child who has been prostituted or corrupted, whether because they are authority figures, teachers, officials or ministers of any religion, that is an aggravating circumstance according to article 380 of the Penal Code.

Pursuant to the Act on the protection of young people of 10 August 1992, a minor who engages in prostitution may be placed in an institution.

Any attempt to commit the acts which are punishable under articles 379 and 379 bis shall also be punishable. Similarly, even if certain acts were committed outside of the territory of Luxembourg, that does not place the guilty beyond the reach of the courts of Luxembourg.[80]

If the procurer is found guilty, the court may place him at the Government's disposal for a minimum of one year and a maximum of five years.[81] In addition, the court may forbid anyone who is sentenced to at least one month in prison, from having or continuing as owner or manager of a hotel, boarding

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[79] Ibid.

[80] Article 380, last paragraph of the Penal Code.

[81] Article 379 bis, paragraph 2 of the Penal Code.

house or employment agency, or being employed at any such establishment in any capacity whatsoever for a period of between one and ten years.[82]

The Act of 10 November 1984 introduced a temporary measure closing the establishment or any place open to the public which had been used for the exploitation of prostitution.[83]

Despite the very repressive nature of the legislation, it has proved impossible to stem the phenomenon of procurement. Collecting enough evidence to break a ring of traffickers and procurers requires lengthy investigations, generally lasting several years, particularly since these rings are usually international rings.

There are no compulsory medical checkups for prostitutes. However, the service "Aids Berodung"[84] (see later under article 12) maintains regular contacts with some prostitutes and it has been suggested that they should be vaccinated against hepatitis B.

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

(a) The rights set forth in article 7, paragraph (a), have long been enjoyed by the women of Luxembourg.

Article 52 of the Constitution, which specifies the qualifications required of voters (who are by definition eligible for public office), states laconically that every voter shall, inter alia, "be a Luxembourger, man or woman".

The right to vote and stand for public office was extended to women in May 1919, and at elections held in that same year, a woman was elected to the

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[82] Article 381 of the Penal Code.

[83] Article 379 ter of the Penal Code.

[84] The AIDS/HIV consultation service operates with the Luxembourg Red Cross and is regulated by the Ministry of Health.

Chamber of Deputies for the first time. Following this modest gain, it was not until 1965 that another woman deputy took her seat in the country's legislature.

The Elections Act of 31 July 1924, as amended, contains no hint of discrimination against women.[85]

Article 51 of the Constitution, final paragraph, states that voters may be invited to make their views known by referendum in such cases and under such conditions as may be determined by law. No general statutory instrument has ever been enacted, but at all events women have the same right to participate as men, since they, too, are voters.

Since the passing of the Act of 12 December 1972, no one may seek to prevent his or her spouse from holding public office, even in the likelihood of "serious detriment" to the material or other interests of the spouse in question or to those of their minor children.[86]

Eligibility of women to serve, or actual service by women, on elected bodies:

- at the commune level:

Under the Communes Act of 13 December 1988, every commune has a governing body made up of the communal council and the college of the burgomaster and aldermen.

In October 1993, 10.3 per cent of the members of communal councils were women, including 10.2 per cent of the burgomasters, 8.1 per cent of the aldermen, and 11.0 per cent of the councillors. This represents an increase of 2.8 per cent over the 1987 elections, after which women represented only 7.5 per cent of the total.

Luxembourg (the capital) has had a woman burgomaster since 1976.

- at the national level:

The Chamber of Deputies comprises 60 members, of whom 10 (i.e. approximately 16.67 per cent) are women. The number of women in the Government is substantially different from the number of women with seats in the House of Deputies, owing to the fact that the functions of a member of the Government are incompatible with those of a Deputy. From 1989 to February 1995, for example, the President of the Chamber of Deputies was a woman. The person in question subsequently gave up that post to become Minister responsible for three portfolios, namely, National Education and Occupational Training, Religious Affairs, and Cultural Affairs.

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[85] See below under article 16.

[86] Civil Code, art. 223, para. 3.

- at the European level:

Luxembourg has six seats in the European Parliament, and following the elections of June 1994, the country's representation was perfectly balanced, with three men and three women Members. A change for personal reasons occurred early in 1995, and as a result there are now four male and two female Members.

At both the national legislative elections and the European parliamentary elections of 12 June 1994, just over 25 per cent of all candidates were women.

(b) From 1912 to 1964, the sovereigns of the Grand Duchy of Luxembourg were women, namely, Grand Duchess Marie-Adélaïde (1912-1919) and Grand Duchess Charlotte (1919-1964). Nonetheless, this situation could never have come about had not the Grand Duke William IV, who was the father of six princesses but had no male offspring, promulgated a family statute in 1907 whereby his eldest daughter, Princess Marie-Adélaïde, was declared the heir apparent. In the event that she should die without issue, the younger princesses were to succeed in order of birth. That statute was ratified by the Chamber of Deputies and acquired the force of law on 10 July 1907. The fact remains that the family compact of the House of Nassau of 30 June 1783 is still in force. It specifies that the crown shall pass to the oldest male descendant in the direct line, to the exclusion of female descendants, and is referred to in article 3 of the Constitution. For that reason, the Government of Luxembourg ratified the Convention on the Elimination of All Forms of Discrimination against Women subject to the following reservation:

> "The application of article 7 shall not affect the validity of article 3 of our Constitution concerning the hereditary transmission of the crown of the Grand Duchy of Luxembourg in accordance with the family compact of the house of Nassau of 30 June 1783, maintained by article 71 of the Treaty of Vienna of 9 June 1815 and expressly maintained by article 1 of the Treaty of London of 11 May 1867."

It is conceivable, however, that at some future time the order of succession to the throne may be altered at the instance of the sovereign, and in that case Luxembourg would, of course, withdraw its reservation.

The first woman Minister took up her duties in 1969. For some time, however, the number of women who were members of the Government remained quite small. The previous Government (1989-1994), which comprised 10 Ministers and two Secretaries of State, at first had only one woman member, namely the Secretary of State for Health, Social Security, Youth and Sports. In 1992 a woman was appointed Minister of Agriculture, Viticulture and Rural Development and Minister in charge of Cultural Affairs. Of the 11 Ministers in the current Government, three are women. Their portfolios are as follows:

- Family, Advancement of Women, and Handicapped and Disabled Persons;

- Social Security, Transport and Communications;

- National Education and Occupational Training, Religious Affairs and Cultural Affairs.

As we have seen,[87] action to promote an equal-opportunity policy at the commune level is being taken by the National Council of Women of Luxembourg with the support of the Ministry for the Advancement of Women. One of the objectives of that action is to improve the status of women in society through, among other things, a visible increase in their participation in local politics.

Women members of the several political parties, especially the environmentalist party known as Déi Gréng, are calling for quotas and parity thresholds in all areas of decision-making as a means of correcting imbalances and achieving a democracy that is representative of the entire population.

- The Council of State

Under article 83 (bis) of the Constitution, the Council of State shall give its advice on bills and amendments that may be proposed, and on any other questions referred to it by the Government or by the laws. The Litigation Committee shall have ultimate authority in administrative matters.

The Council of State comprises 21 members appointed by the Grand Duke. At present, the Council of State includes only one woman member.

- The Economic and Social Council

This is an advisory body responsible for examining, either on its own initiative or at the request of the Government, economic, financial and social problems affecting a number of economic sectors or the economy as a whole.

The Economic and Social Council is made up of 35 members and an equal number of alternates who represent the various sectors of the economy, possess a high degree of competence in their respective fields and are completely independent vis-à-vis professional organizations. There is only one woman, who is an alternate.

(c) Investigation revealed that as of August 1994, women accounted for the following percentages of the main political parties and trade unions:

[87] Under article 4 above.

Political parties:[88]

ADR:[89]	24.9 per cent
CSV:[90]	33 per cent
LSAP:[91]	30 per cent
DP:[92]	25 per cent
DÉI GRÉNG:[93]	40 per cent

Both CSV and DP are currently led by women.

Trade unions:[94]

OGBL:[95]	25 per cent
LCGB:[96]	24 per cent
FEP-FIT:[97]	45 per cent
CGFP:[98]	35 per cent

These figures show that there are not enough women in political and public life.

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[88] Only parties for which data were available have been included.

[89] "Aktiounskomitee fir Demokratie a Rentegerechtegkeet", Action Committee for Democracy and Pension Equality.

[90] "Chrëschtlech sozial Vollékspartei", Social Christian Party.

[91] "D'Sozialisten", Socialist Party.

[92] "D'demokratech Partei", Democratic Party.

[93] The Green Party.

[94] Only trade unions that are representative at the national level have been included.

[95] Confederation of Independent Trade Unions of Luxembourg.

[96] Confederation of Christian Trade Unions of Luxembourg.

[97] Federation of Private Employees - Independent Federation of Workers and Executives.

[98] General Confederation of Civil Servants.

The access of women to government employment is guaranteed both by article 11 of the Constitution, which states in paragraph 2 that "Luxembourgers shall be equal before the law; they alone shall be eligible for civil (...) employment," and by the system used in recruiting civil servants, which is by an anonymous competitive examination.

In terms of statistics, the breakdown of civil service employees according to sex was as follows as of 22 September 1995.[99] Officials: women 22 per cent, men 49 per cent; white-collar workers: women 11 per cent, men 4 per cent; blue-collar workers: women 8 per cent, men 6 per cent.

Overall, women accounted for 41 per cent of all State employees.

Women accounted for 93 per cent of all part-time employees.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Women are also eligible, on a footing of complete equality with men, for the various posts and functions within the Ministry of Foreign Affairs.

Women employees of the Ministry of Foreign Affairs who are pursuing diplomatic careers have the same opportunity as their male colleagues to represent Luxembourg at the international level and to participate in the work of international organizations. The first woman to embark upon a diplomatic career in Luxembourg did so in 1973, and the first woman ambassador was appointed in November 1992.

At present, 10 per cent of Luxembourg's diplomats are women.

In view of the recent increase in the numbers of women taking the exams for the diplomatic service, Luxembourg is confident that there will be more women employed in that service in the near future.

Within the several committees and commissions of the European Union, Luxembourg is represented by various technical Ministries, depending on the subjects involved. Women who work in those Ministries may thus have occasion to represent Luxembourg abroad without being in the diplomatic service.

At present, over half of all magistrates in Luxembourg are women.

For the past three years, a large majority of newly appointed magistrates have been women.

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[99] 13,287 full-time employees and 2,263 part-time employees, the latter category consisting mainly of women.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

The Constitution leaves it up to the legislature to determine under what conditions Luxembourg nationality is acquired, retained and lost (Constitution, article 9).

Nationality in Luxembourg is regulated by the Luxembourg Nationality Act of 22 February 1968.

Before the Act of 26 June 1975, a woman forfeited her Luxembourg nationality upon marriage when, under the laws of her husband's country, she acquired his nationality.

Now, no one who marries a foreigner loses his or her Luxembourg nationality, unless he or she expressly renounces it by making a formal declaration to that effect before the Civil Registrar. Such a declaration may be made only if the person making it can show that he or she possesses foreign nationality or will acquire or recover it by making the declaration (article 25, paragraph 2 of the above-mentioned Act of 22 February 1968, as amended).

The Act of 26 June 1975 included an interim provision expressly designed to cover cases where, under the old law, a woman had lost her Luxembourg nationality as a result of acquiring a foreign nationality through marriage, or because her husband had acquired a foreign nationality. Where there was no indication on the woman's part that she had wished to renounce her Luxembourg nationality, she could recover it by making a formal declaration before the competent Civil Registrar (article 45 of the above-mentioned Act of 22 February 1968, as amended).

The most recent changes to the rules governing Luxembourg nationality were introduced in an Act promulgated on 11 December 1986.

One of the primary purposes of that Act was to safeguard the principle of the equality of men and women as it applies to two specific aspects of nationality, namely the transmission of nationality to children, and the acquisition of nationality by a foreigner who marries a citizen of Luxembourg.

In the first place, the Act of 11 December 1986 put an end to a form of discrimination against men married to citizens of Luxembourg. Before the passage of the Act, a woman who married a citizen of Luxembourg could obtain Luxembourg nationality without being required to reside in Luxembourg. A man who married a citizen of Luxembourg, by contrast, could acquire Luxembourg

nationality only through naturalization - a costlier procedure - and after having lived in the country for five years.

Today, any foreigner, male or female, who marries a citizen of Luxembourg may elect to acquire Luxembourg nationality provided he or she has lived in the country for three years.

Article 47 of the Act of 22 February 1968, however, contained an interim provision permitting women of other nationalities to exercise the option to which they had been entitled under the old law as long as the stipulated deadline for doing so had not passed.

The Act of 11 December 1986, moreover, gave women the same rights as men with respect to the transmission of nationality to their children. Any child born to,[100] or adopted by[101] a citizen of Luxembourg, whether man or woman, automatically has Luxembourg nationality. No distinction is made between men and women, whereas under the old law a child's nationality was determined by that of his or her father.

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

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[100] Art. 1, para. 1 of the Luxembourg Nationality Act of 22 February 1968, as amended.

[101] Art. 2 of the same Act.

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 23 of the Constitution states that:

> "The State shall ensure that every Luxembourger receives primary education, which shall be compulsory and provided free of charge. Medical and social assistance shall be regulated by the law.
>
> The State shall set up free secondary educational establishments and the necessary courses of higher education.
>
> The law shall determine the means of supporting State education and the conditions under which it is to be supervised by the Government and the communes; it shall also regulate all educational matters and create a system of financial assistance for pupils and students.
>
> Every Luxembourger shall be free to pursue his studies in the Grand Duchy or abroad and to attend the universities of his own choosing, subject to the provisions of the law concerning conditions of admission to employment and the exercise of certain professions."

The Education Act of 10 August 1912 made education compulsory in Luxembourg. Every child who reaches the age of six years before 1 September must begin his or her schooling that same year and must receive instruction for nine consecutive years, i.e. until the age of 15, in the subjects designated by law.

In 1994, 52.5 per cent of all women in the 25-29 age group had completed secondary school[102] (i.e. continued their education beyond the compulsory

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[102] Data from 1994 provided by Eurostat on the occasion of the publication of a brochure on "Statistics in brief: population and social conditions", 1995/12. The data are repeated in less detailed form in table 4, p. 4; see annex.

age)[103] as compared with 57.1 per cent[104] of men in the same age group; in the 30-39 age group, the corresponding figures were 46.3 per cent for women[105] and 57.5 per cent for men;[106] in the 40-49 age group, 42.1 per cent for women[107] and 52.2 per cent for men;[108] and in the 50-59 age group, 31.9 per cent for women[109] and 50.4 per cent for men.[110]

Since 1968, co-education has been the norm at all levels.

1. Pre-school and primary education

When new school curricula were introduced efforts were made to eliminate sexist stereotypes from school textbooks. The new curricula also sought to promote egalitarian attitudes and behaviour, develop communication skills and introduce new information technologies.

In addition, the "Orika" project[111] for pupils in the sixth year of primary studies is intended to inform pupils, their parents and teachers about course options in technical secondary schools. Pupils take introductory courses in the different technical high schools, which seek to eliminate stereotypes about the various occupations and to diversify the vocational choices of girls and boys.

During the initial and recurrent training of pre-school and primary school teachers, emphasis is placed on the preeminent role of the teacher in the transmission of sexist conduct and attitudes.

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[103] Of these 52.5 per cent, 22.2 per cent took a recognized post-graduation programme, leading to a certificate of higher education, according to the Eurostat publication referred to in the previous note.

[104] Of the 57.1 per cent, 26.7 per cent have a certificate of higher education.

[105] Of the 46.3 per cent, 22.2 per cent have a certificate of higher education.

[106] Of the 57.5 per cent, 26.6 per cent have a certificate of higher education.

[107] Of the 42.1 per cent, 20.2 per cent have a certificate of higher education.

[108] Of the 52.2 per cent, 25.1 per cent have a certificate of higher education.

[109] Of the 31.9 per cent, 16.2 per cent have a certificate of higher education.

[110] Of the 50.4 per cent, 25 per cent have a certificate of higher education.

[111] "Orientatioun fir Kanner", orientation course for children.

2. Traditional secondary and technical secondary education

The various branches of traditional secondary schooling and the general and vocational branches of technical secondary education are compulsory for both girls and boys. In both educational streams, introductory courses to new technologies have been compulsory for all pupils since the 1986/87 school year.

However, one result of the existing freedom of choice is that, despite the considerable efforts being made at all levels, girls continue to attend traditional training institutions.

Given that students in traditional secondary schools start to specialize later and given the pre-specialization options that exist, it is possible to steer young girls into those sectors in which female candidates have traditionally been less represented.

In the technical secondary schools, technology courses taught from as early as the lower secondary cycle serve to increase girls' awareness of less traditional vocational training avenues.

The following initiatives have been taken to make girls, in particular, more aware of the occupations of the future:

- internships in enterprises;

- "industry and craft weeks" organized by the Ministry of Education and Vocational Training and by the business chambers;

- free workshops at which women and young girls are introduced to the information sciences and to mechanical and electrical engineering;

- information kiosks at international fairs held in Luxembourg;

- PETRA L7 Project: "Technik fir Medercher - Firwat net?" ("Technical vocations for girls - why not?") launched in 1990 by the Technical Lycée of Arts and Trades. The project was aimed at making girls, their parents and their school milieu more aware of the occupations of the future, but also, more generally, at adopting less traditional approaches to training which take account of real talents and abilities. The Lycée carried out an awareness promotion campaign and organized introductory courses to technology;

- PETRA L31 project: "Training and insertion". This project to promote the socio-occupational insertion of young girls into technical fields, which was introduced by the Lycée Technique of Arts and Trades, served as a complement to the project "Technik fir Medercher";

- exchange programme with young girls from Germany, Ireland and France (construction of a solar-powered vehicle);

- PETRA and IRIS (European network of training programmes for women) project: "Women and technology" - awareness-building seminar for women (workshops, discussions, consciousness-raising).

3. Adult training

The aim of lifelong vocational training in Luxembourg,[112] which may be organized by the Ministry of Education, business chambers, communes, or by private associations authorized to do so, is to:

- assist individuals who have a professional qualification to adapt to technological change and to the needs of the economy;

- give individuals who so desire an opportunity to prepare for the diplomas and certificates that are the subject of the legislation governing technical education and to obtain professional qualifications within a system of accelerated training;

- support and complement, at the initiative of the business chambers concerned, practical training provided on the job.

Women have the right to benefit from opportunities for continuing vocational training on an equal basis with men. Women re-entering the labour market[113] may take advantage of the opportunities that exist for training, especially in the field of office automation.

By the Act of 19 July 1991, an adult training service was established to coordinate the training available to adults in evening classes in secondary, technical secondary and post-secondary schools and to provide basic schooling for adults resident in Luxembourg, who indicate their desire to receive such training.

The diplomas and certificates awarded upon the completion of adult study programmes confer the same rights as the corresponding diplomas awarded for daytime classes. Women who abandoned their studies before obtaining their school leaving diplomas therefore have a chance to resume their studies during more flexible hours.

4. Future projects and programmes

In its declaration of 22 July 1994, the Government stated that efforts will be intensified in the field of education and training to encourage young girls and women who are about to select a course of study and a vocation to consider a range of more future-oriented occupations.

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[112] Under the responsibility of the vocational training service established by the Act of 4 September 1990.

[113] See article 11 below.

The following activities are aimed at ensuring equality of treatment at all stages of an individual's professional life:

- encouraging girls to go into more technical and future-oriented fields;

- monitoring the progress of girls who have chosen non-traditional vocations;

- promoting a spirit of enterprise in both girls and boys;

- promoting models of good practice of equality of opportunity.

In this connection, mention should be made of the Leonardo da Vinci community programme, a vocational training programme based on the experience with earlier programmes PETRA (initial training), FORCE (continuing education) and the IRIS network. The LEONARDO programme includes an "equality of opportunity" component.

For the European year of lifelong education and training, the Ministries of Education and Vocational Training and for the Advancement of Women have proposed a campaign on the theme "a vocation for life?" A book containing the testimonies of women who have changed vocations during the course of their lives will be part of publicity campaign with posters, brochures, etc.

In theory, women and men have the same opportunities for participating in sports. However, women who engage in a professional activity have the additional burden of family and domestic responsibilities which, even now, are only rarely shared by men.

The survey to be conducted during 1996 will provide information on the schedules and recreational activities of women not engaged in any remunerated activity.

As regards access by women to sex education, mention should be made of the Act of 15 November 1978 concerning sex education, prevention of backstreet abortions and regulation of abortions, which introduced information and sex education into all levels of the educational system. In addition, as it is required to do under the Act of 15 November 1978, the Ministry of Family Welfare prepares regular sex education information kits.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

1. (a) The right to work, an inalienable right of women

The Act of 21 May 1948 which amended the Constitution added to article 11 of the Constitution of 17 October 1868 a paragraph 4, which states that "the law guarantees the right to work and assures to every citizen the exercise of this right".

One of the instruments which the State of Luxembourg has put in place to ensure the implementation of this provision is the Department of Employment, whose task it is to promote optimal use of the labour force, in a manner

consistent with current economic and social policies.[114] In fulfilment of its mission, the Department of Employment monitors the situation and developments in the job market, makes adjustments for supply and demand and ensures compliance with legislation on the prevention and reduction of unemployment and the provision of unemployment benefits, without any distinction based on sex.

Unemployed women seeking work behave differently from their male counterparts: fewer than half of all unemployed women are registered with public employment agencies; only 25 per cent of unemployed men are not registered.[115] It also appears that women remain on the register of employment seekers for longer periods than men.[116]

Women account for 37.14 per cent of the active population of Luxembourg; 59.4 per cent of women of working age are engaged in remunerated activity. The unemployment rate for men is 3.2 per cent and for women 4 per cent. The unemployment rate among young people is 6.5 per cent for men and 7.4 per cent for women. In recent years,[117] however, the number of women in employment has been increasing at a higher annual average rate than the number of men with jobs (6.1 per cent and 1.6 per cent, respectively, in 1994).[118]

The Government of Luxembourg, like the authorities of the European Union, is aware of the fact that the situation of women in the job market is particularly precarious. On 15 December 1995, a seminar on the theme of "measures to promote employment among groups of particularly disadvantaged persons in the job market" was organized by the European Commission, the Ministry of Labour and Employment, the Department of Employment and CEPS[119], as a follow-up to the Essen summit. These disadvantaged groups are comprised of young people, the long-term unemployed, elderly workers and unemployed women.

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[114] Article 2 (1) of the Act of 21 February 1976 concerning the organization and functioning of the Department of Employment and establishing a national employment commission.

[115] Study not yet published by Blanche Lejealle, CEPS, "Women and unemployment", based on 1994 data.

[116] See table No. 2 under section 3.3, page 9 of the brochure "Under-employment in the Grand Duchy of Luxembourg", published by the Department of Employment in March 1995.

[117] Except in 1993 when the annual change in the employment rate for women was down 1.2 per cent while the rate for men was up 3.1 per cent.

[118] Figures taken from the publication "Employment in Europe, 1995", published by the European Commission, document COM (95) 396, page 196. (see attached extract in annex).

[119] CEPS is the Centre for Studies on Population, Poverty and Socio-economic Policies.

The distribution of workers by sex is not the same for all socio-occupational groups. The vast majority of women are employed in the service sector which includes banks and public administrations: 88.5 per cent of employed women work in this sector as opposed to 59.2 per cent of employed men.[120]

Very few women are employed in industry; only 8.2 per cent of women are employed in industry, as compared with 37.9 per cent of men.[121] Similarly, women are under-represented at decision-making levels.

Since the elimination in 1989 of the separate rosters for female and male candidates[122] for admission to the Higher Institute of Pedagogical Studies and Research, more women have been entering this field.[123]

On the subject of working patterns, there is a clear difference between men and women: 19 per cent of women work part time, while the proportion of men working part time is insignificant.[124]

By its Act of 26 February 1993 governing voluntary part-time employment, the legislature of Luxembourg opted for a system of strict equality of treatment between full-time and part-time salaried workers, including provisions which guaranteed the same social protection to the two categories of workers.

In order to provide enterprises with incentives to adopt innovative measures to promote female employment, a special award was established in 1993 at the initiative of the Ministry of Labour and Employment to reward those enterprises which have taken action to increase the participation of women in the labour force, improve the quality of female employment, develop their potential, including through the strengthening of programmes to provide education and vocational training, and eliminate or counteract the negative consequences in women's work.

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[120] "Employment in Europe, 1995", mentioned above, same reference.

[121] Ibid.

[122] See below in this same article, under the heading "Access to training, ...".

[123] In view of the fact that the training of pre-school and primary school teachers lasts three years, the effect of this change was felt beginning in 1992. By way of example, in 1990, 20 men compared with 21 women completed training as primary school teachers; 3 men compared with 15 women completed training as pre-school teachers. In 1994, 19 men as opposed to 40 women completed training as primary school teachers; no men were among the 22 graduating pre-school teachers, who were all women. Source: ISERP (Institute of Pedagogical Studies and Research).

[124] Situation in 1994. Source: "Employment in Europe, 1995", European Commission, above-mentioned, page 196, see annexes.

In 1995, the female enterprise award was won by the enterprise which had made particularly noteworthy efforts to reintegrate women re-entering the labour market. In 1996 it will go to an enterprise which has been particularly supportive of the initial vocational training of young girls.

Women who have interrupted their careers to devote themselves fully to raising their children and who wish to return to work will be assisted by various private organizations.[125] The Ministry for the Advancement of Women provides funding for a portion of the personnel and operating costs and support is also provided by business chambers and the continuing vocational training centres.[126]

Thus, for example, vocational training in office automation, which is funded jointly by the European Social Fund and the Ministry of Labour, is directed towards women who wish to re-enter the labour market after an absence due to the birth and raising of children. These courses are well attended and their success rate in terms of insertion in the job market is more than satisfactory.

Another project, "Opportunity 2000", which was selected under the employment and human resources development initiative of the European Commission and promoted by the "Initiativ Rem Schaffen",[127] seeks to promote the socio-occupational reinsertion of women by increasing their awareness of vocational opportunities, offering practical courses on how to prepare résumés and how to behave at an interview, guidance for women pursuing vocational training courses, and making enterprises more aware of the potential which women represent because of their education, motivation and experience.

1. (b) Access to employment and jobs

Article 3 (1) of the Act of 8 December 1981 concerning equality of treatment between men and women in access to employment, training, occupational advancement and working conditions states that equality of treatment with respect to conditions of access, including selection criteria, to jobs or positions in any sector or branch of activity and at all levels of the occupational hierarchy, must be ensured through regulatory, administrative and statutory provisions in collective labour agreements, company rules and regulations and in the statutes of independent professions, as well as in practice.

Article 3, paragraph 2 of the aforementioned Act of 8 December 1981 prohibits, inter alia:

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[125] Asbl "Initiativ Rem Schaffen" and "Training Centre for Women, Families and Single Parent Families" (CCFM), among others.

[126] See article 10 above.

[127] "Return to work initiative".

- employers and all those who advertise or publish offers of employment from making reference to the sex of the worker or from using elements which, even without any explicit reference, might indicate or imply the sex of the worker. In announcements or publications in which offers of employment are advertised, the generic description of the worker sought must be followed by the letters (M) or (F);

- any reference to the sex of the worker, whether salaried or own-account, in the conditions of access to and criteria for selection for jobs or posts, whatever the sector or branch of activity, or any use in these conditions or criteria of elements which, even without explicit reference to the sex of the worker, might lead to discrimination;

- the refusal or impeding of access to employment or to occupational advancement for explicit motives based directly or indirectly on the sex of the worker.

Any employer who, despite the written order of the Department of Employment to observe the principle of equality of treatment, continues to make announcements or offers which violate the principle of equality of treatment referred to in article 3 of the Act, shall be liable to a fine of 2,501 Lux F to 20,000 Lux F.[128] This penalty may be increased to up to twice the maximum amount for repeat offenders.[129]

Article 3, paragraph 2, of the Act permits the Government to provide by decree of the Grand Duchy of Luxembourg for those cases in which gender may be mentioned in conditions of access to a job, including, where relevant, to training leading thereto or to an occupation for which gender constitutes a determining factor by reason of the nature of the occupation or the conditions in which it is exercised. To date, however, the Government has not used the powers granted to it under this Act.

1. (c)* Access to training, refresher training and professional advancement

The above-mentioned Act of 8 December 1981 also enshrines the principle of equality of treatment between men and women with regard to access to training, professional advancement, vocational guidance, advanced training and occupational retraining.[130]

As we have mentioned under article 2, the Litigation Committee of the Council of State, in its capacity as supreme administrative Court, annulled a

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[128] An amount which must be multiplied by four in accordance with the Act of 13 June 1994 governing the penalty regime.

[129] Article 9 of the aforementioned Act of 8 December 1981.

[130] Article 4 of the aforementioned Act of 8 December 1981.

ministerial order denying admission of a female candidate to ISERP.[131] This refusal, which was based on the fact that there were two separate rosters, one for female and one for male candidates, was deemed to be a violation of the general principle of equality of treatment between men and women in access to training, a principle borrowed from Community law and incorporated into the law of Luxembourg through the Act of 8 December 1981. The Litigation Committee of the Council of State thus gave precedence to the Act of 8 December 1981 over the Act of 6 September 1983 concerning access to the Higher Institute of Pedagogical Studies and Research.[132]

Following this decision, the Act of 6 September 1983 was amended and a single roster based on identical criteria was introduced (Grand Duchy regulation of 22 June 1989) with a view to ending this discrimination.

It may be observed that co-education of girls and boys at all levels of schooling ensures equality of opportunity in access to all forms of education and all types of training.[133]

*Conditions of employment and dismissal

Similarly, the Act of 8 December 1981 guarantees equality of treatment with respect to conditions of employment, including grounds for dismissal. It prohibits, inter alia:

- any reference to the gender of the worker in the conditions of employment and in the conditions, criteria or grounds for dismissal or use of any elements which, even without explicit reference to the gender of the worker, might lead to discrimination;

- The establishment or discriminatory application of conditions, criteria or grounds for dismissal on the basis of gender.[134]

Similarly, as already noted under article 2, any dismissal, the primary reason for which is based on the employer's reaction to a justified complaint, to intervention by the General Inspectorate of Labour and Mines or to legal proceedings designed to enforce the principle of equality of treatment in the areas in question shall be considered improper.

1. (d) Remuneration

Equality of treatment in the area of remuneration is guaranteed by the Grand Duchy regulation of 10 July 1974 concerning equality of remuneration between men and women of which mention was made earlier under article 2. In its

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[131] Higher Institute of Pedagogical Studies and Research.

[132] Decision of the Council of State of 13 December 1988.

[133] See article 10 above.

[134] Article 5 of the above-mentioned Act of 8 December 1981.

first article, the regulation requires all employers to ensure that men and women receive equal remuneration for the same work or for work of equal value.

The term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.[135]

By way of penalty, provisions of contracts for the hire of services or collective agreements that stipulate for one or more workers of a given sex remuneration that is lower than that paid to workers of the other sex for the same work [or for work] of equal value are void ab initio. The higher remuneration paid to the latter workers shall automatically be substituted for the one mentioned in that provision.[136]

In a judgement rendered on 21 April 1982, the Supreme Court of Justice, ruling on appeal, declared void a provision on bank employees' labour contracts which gave married male employees the unreserved right to a domestic subsidy, while allowing the subsidy to married female employees only under severely restricted conditions. The Court acknowledged the remunerative nature of this domestic subsidy, since it had been provided for in the employment contract, in return for work carried out by the employee.

Since the Act of 20 May 1983 that replaced the previous "head of family" allowance with a "family" allowance, legislation relating to the remuneration of public servants no longer makes any distinction between men and women.[137]

The Grand Duchy regulation of 10 July 1974 concerning equal remuneration for men and women further stipulates that the different elements of which remuneration is composed should be established in accordance with norms that are identical for men and women: the criteria for professional rating and promotion, as well as all other factors used in calculating remuneration, particularly methods of post evaluation, should be identical for workers of both sexes.[138]

In fact, however, the evaluation and rating criteria contained in several labour contracts continue to favour male workers. Traditionally masculine criteria such as effort or strength, are given more weight than criteria which favour women, such as dexterity.

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[135] Article 2 of the above-mentioned regulation.

[136] Article 4 of the above-mentioned regulation of 10 July 1974.

[137] The 22 June 1963 law determining the salaries of public servants, article 2, paragraph 3, provides that: "Female employees shall be entitled to the same benefits as male employees."

[138] Article 3, paragraphs 1 and 2 of the regulation cited.

A study undertaken in March 1995 by CEPS/INSTEAD[139] on income and living conditions found that the significant differences between the hourly rates of pay for men and those for women in the private sector have been greatly reduced since 1984: whereas in 1984, women's average hourly pay was 70.6 per cent that of men, by 1993, it had risen to 76.3 per cent.[140]

This may be explained by a structural change in female employment, women having become progressively better qualified.

The differences in income which continue to exist may be explained in part by the fact that men's career paths are different from those of women. Whereas men's careers are linear, women's are marked by gaps, as women interrupt or curtail their careers for family reasons.

It should be noted that the guaranteed minimum income, which is a social assistance measure, is paid equally to men and women.

1. (e)* Social security

Directive 79/7 EEC of 19 December 1978 concerning the progressive implementation of the principle of equal treatment of men and women with respect to social security became law in Luxembourg with the passage of the Act of 15 December 1986. The purpose of the latter was to strike from the social security legislation of Luxembourg all internal measures that were contrary to the principle of equality of treatment laid down in the directive.

The Act of 15 December 1986 affirms that the principle of equal treatment of men and women applies to the social security regulations that provide coverage in respect of sickness, invalidity, old age, accidents at work, employment-related illness and unemployment, as well as to arrangements relating to social assistance where those are designed to complement or supplement the aforementioned regulations.[141]

Those who drafted the Act examined the basic legislation of the various branches of social security and considered the various aspects, namely, material scope, conditions for access, obligation to contribute, calculation of benefits and conditions relating to duration of and continued entitlement to benefits, in order to isolate both direct and indirect discrimination.

Most of the changes thought necessary as a result of this examination were effected by replacing the terms "wife" and "widow" in the text by others of a non-gender-specific nature.

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[139] Centre for the Study of Population, Poverty and Socio-Economic Policies.

[140] C.f. the brochure "Revenus - conditions de/vie" CEPS/INSTEAD, published in March 1995.

[141] Act of 15 December 1986, article 1.

Moreover, the law abolished one indirect form of discrimination against women: the exemption from compulsory health insurance of those employed in domestic service and not normally working more than 16 hours per week was abolished, and replaced with exemption from compulsory health insurance for those only occasionally in paid employment.[142]

Directive 86/378/EEC of 24 July 1986 concerning the implementation of the principle of equal treatment of men and women with respect to social security occupational schemes has not yet been translated into national law. The Government proposes to examine existing employers' organizations schemes before implementing any law on supplementary pensions.

The issue of survivors' benefits, excluded from the aforementioned Act of 15 December 1986, was dealt with in the Act of 27 July 1987 concerning old age, disability and survivors' pensions. This Act extends the right to a survivor's benefit to widowers,[143] whereas only widows had previously had that entitlement: it thereby abolishes a discrimination which primarily affected widowers, but which also acquiesced in the general principle of female inferiority.

The Act of 27 July 1987 also contains two significant changes, which principally benefit women. Firstly, it introduces the concept of a "baby-year": the first year following the birth of a child (or following the adoption of a child under four years of age) and devoted to rearing it may, if the person concerned so requests, count as a period of compulsory insurance for purposes of old age benefits. That period was extended to two years by the Act of 24 April 1991.[144] Contributions are made by the State.[145]

The "baby-year" begins the month subsequent to the birth or adoption, or, where appropriate, the month subsequent to the expiry of maternity benefit (see further on in the same article). The applicant, who may be either the mother or father, must have been covered by compulsory insurance in accordance with the Social Insurance Code, article 171, for 12 of the 36 months preceding the birth

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[142] This exemption from compulsory insurance has subsequently been further modified in the following terms: "persons who work only occasionally rather than full-time, namely for a pre-determined period which shall not exceed three months each year, shall be exempt from compulsory insurance." (Social Insurance Code, article 4, paragraph 1).

[143] Social Insurance Code, article 195.

[144] Social Insurance Code, article 171, paragraph 7.

[145] Social Insurance Code, article 240, last indent.

or adoption. The request for the year to be taken into account must be submitted within 24 months of the birth or adoption.[146]

The other major change is contained in article 172, paragraph 4, of the Social Insurance Code, which provides that "periods during which a parent was caring for one or more children under six years of age" shall count as periods of insurance, but solely in order to complete the required number of contributions in order to be able to draw an old-age pension early, to get the minimum pension, and in order to get supplementary allowances. Such periods must not be less than 8 years for the birth of two children, or 10 years for the birth of three.

*Paid leave

Men and women workers in both the public and private sectors enjoy the same rights to paid leave. Private sector employees have the right, in addition to special leave,[147] to an annual leave of at least 25 days,[148] while in the public sector, staff have the right to 26 days annual leave,[149] in addition to comparable special leave.

1. (f) Protection of health and safety in working conditions

In this sphere, also, men and women are equally protected. In the private sector the issue is dealt with by the Act of 17 June 1994 concerning the safety and health of employees in the workplace, which includes general principles, with particular respect to the prevention of occupational hazards, the protection of health and safety, the elimination of risk and accident factors,

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[146] The two-year period may be extended to four years if, at the time of the birth or adoption, the applicant is bringing up at least two other children at home (Social Insurance Code, article 171, paragraph 7, as amended by the Act of 27 July 1992 reforming health insurance and the health sector).

[147] The Act of 22 April 1996, article 16, mentioned above, states that employees are entitled to special leave as follows: "one day prior to beginning military service and for the death of a blood relative or relative by marriage of the second degree; two days when wife gives birth, child gets married or when move house; three days for the death of a spouse, blood relative or relative by marriage of the first degree; six days for the marriage of the employee; two days when adopting a child aged under 16, unless the employee has already been granted the leave provided for such purposes by the Act of 14 March 1988. All such leave to be taken on full pay."

[148] The Act of 22 April 1966, article 4, standardizing annual paid leave for private sector employees, as amended.

[149] The Act of 16 April 1979, as amended, establishing the regulations governing civil servants, article 28; the Regulation of 22 August 1985 determining the rules governing the leave of civil servants and State employees, as amended, article 4, (with respect to normal leave); the aforementioned regulation of 22 August 1985, article 29 (with respect to special leave).

information, consultation, and the application of these principles.[150] This Act applies equally to male and female workers.

In the public sector, the issue is regulated both by the Act of 16 April 1979, establishing the regulations governing civil servants, as amended, and by the Act of 19 March 1988, concerning safety in State administrative offices and services, public premises and schools, as amended. The Act of 16 April 1979, article 32, paragraph 2, states that

> "The State shall protect the health of employees in the exercise of their functions:
>
> (a) By carrying out periodic checks, which take into account the nature of the employment, of employees' continued physical and mental well-being;
>
> (b) By ensuring that health regulations are complied with."

The purpose of the aforementioned Act of 19 March 1988 is to ensure the physical integrity of all those who participate in the professional and scholastic activities specified in the Act.

Neither the legislation covering the private sector nor that applicable to the public sector makes any special reference to reproductive functions. (See further down in the same article for protection of the pregnant woman.)

*Sexual harassment

Sexual harassment relates both to the right to equal health protection and to the right to equal treatment with regard to working conditions. Sexual harassment, most commonly perpetrated against women, frequently has negative effects on the victim's mental health placing her in a hostile work environment for reasons linked with her gender. The Ministry for the Advancement of Women has been given the responsibility of producing a draft law, with a view to guaranteeing the protection of the dignity of men and women in the workplace. Preparatory work was begun recently.

2. (a) Ban on dismissing employees on the grounds of pregnancy or marital status

Article 10, paragraph 1 of the Act of 3 July 1975 concerning: (1) protection of pregnant women in the workplace; and (2) the amendment of article 13 of the Social Insurance Code, as amended by the Act of 2 May 1974, prohibits an employer from dismissing a female employee who has been medically certified pregnant, or who has given birth within the previous 12 weeks.

Should she be dismissed before her pregnancy has been medically certified, the employee may, within one week of being informed of her dismissal, produce a medical certificate showing that she is pregnant. The dismissal will then be

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[150] Above-mentioned Act of 17 June 1994, article 1, paragraph 2.

void, and the court, at the request of the employee, may order that she be reinstated.[151]

Pregnancy does not, however, prevent dismissal on serious grounds arising from some action or misdeed on the part of the employee.[152]

In this respect, judges have shown some leniency towards pregnant women. In a 19 December 1990 judgement, the Supreme Court of Justice, ruling on an application for judicial review, refused to characterize either the rudeness, authoritarianism and aggressiveness of an employee, or her unjustified two-week absence, as a gross fault, on the basis that her behaviour was due to her pregnancy, which was well-known to her employer.

In the case of a probationary contract, pregnant women enjoy greater job security than other employees, even during the period of probation:[153] even if the employee's abilities or behaviour do not measure up to the firm's requirements, the employer may not terminate the probationary contract using the shorter notice in effect during the period of probation. "The legislator considers that the social and legal protection of pregnant women takes precedence over the contractual freedom of the employer, since the latter might be interpreted as giving the employer leave - during the period of probation - to disengage from the working relationship on the grounds of the employee's pregnancy".[154]

Any clause which states that a woman's contract shall be terminated if she marries is void ab initio, as is any dismissal on those grounds.[155] Any female employee who has been dismissed because she got married may dispute the validity of the dismissal and demand the continuation of the working relationship within two months; if she does this, the employment contract shall remain in force and the employee shall continue to have the right to receive her full salary.[156]

2. (b) Maternity leave

The Act of 3 July 1975 referred to above exempts pregnant women from working during the eight weeks prior to the estimated due date upon presentation

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[151] The Act of 3 July 1975, concerning the protection of pregnant women in the workplace, article 10, paragraph 1, subparagraph 2.

[152] The aforementioned Act of 3 July 1975, article 10, paragraph 2.

[153] The Act of 24 May 1989 on the employment contract, article 34, paragraph 4, final subparagraph.

[154] Supreme Court of Justice ruling of 21 April 1995 on an employment appeal.

[155] The Act of 3 July 1975 concerning the protection of pregnant women in the workplace, article 10, paragraph 5.

[156] Ibid.

of a medical certificate, and during the eight weeks subsequent to delivery (12 weeks after delivery for mothers breastfeeding their children, or in cases of premature or multiple births).[157]

While the employee is on maternity leave, the employer is obliged to keep her position or an equivalent one open for her.[158]

Furthermore, during maternity leave women receive maternity pay equivalent to their full salary.[159]

2. (c) Reconciling family obligations with work responsibilities

*Care of children and adolescents

Since 1979, the Ministry of Family Affairs has been endeavouring to develop an infrastructure for the care of children and adolescents (traditional day-care centres, drop-in day-care centres, day nurseries, and so on). Due to the great increase in the number of government-supported projects, the budget set aside for this purpose has soared from under 100 million francs in 1985 to 398,200,000 francs in 1995, and will be set at 420 million in 1996. Since it is as yet insufficient to meet demand, this effort will have to be sustained over the next few years in order to allow parents the opportunity to engage in professional activity. The State not only contributes to the running expenses of government-supported day-care centres and nurseries but also helps cover the running expenses of private centres and provides grants to parent groups and associations that organize child-care, assistance with homework and after-school programmes. It also gives subsidies to private day-care centres to cover infrastructural costs. The Ministry of Family Affairs is preparing a bill to regulate childcare which will include proposals for supporting private undertakings.

The Ministry of Family Affairs finances and coordinates family placement services which place children in a family either during the daytime only, or overnight as well. This service is of particular benefit to single parents (often women) who have irregular working hours. The Ministry has also made arrangements with a management body for the provision of a service to provide care in the home for children who are ill. The 'Krank Kanner dohém'[160] service is in great demand, and there are plans to consolidate the structure in the future.

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[157] The Act of 3 July 1975 concerning the protection of pregnant women in the workplace, article 3, paragraphs 1 and 2.

[158] Above-mentioned Act of 3 July 1975, article 10, paragraph 4.

[159] C.f. the Act of 3 July 1975 concerning the protection of pregnant women in the workplace, article 8, paragraph 1.

[160] 'Sick children at home' service.

* "Parental" leave

In the public sector, unpaid leave and part-time work are other ways of permitting parents to combine their family and professional responsibilities. Following a period of maternity leave, the employee, male or female, has the *right* to request up to two years of unpaid leave, or to ask to work part-time until the child enters primary school.[161] The two years of unpaid leave and the first two years of part-time work following maternity leave count respectively as periods of full service. In addition, permission to work part time *may* be granted in order to allow an employee to care for a child under 15 years old.[162] In this case, in respect of any period of part-time work over and above the two years following maternity leave, time not worked is not taken into account for purposes of calculating the pension. It is, however, taken into consideration for purposes of determining entitlement to a pension.

In the private sector, there is, as yet, no parental leave with guarantee of re-employment. Any woman who, at the end of her maternity leave, wishes to stay at home with her child, may choose not to return to work without giving notice.[163] This option is not open to fathers: they must give notice as required by law.

A woman who has taken this option is guaranteed by law the right to request re-instatement during the year following the end of maternity leave. If she makes such a request, the employer is obligated to give her priority when filling positions for which she is qualified.[164] Fathers do not have this right.

Some collective agreements provide for unpaid leave once maternity leave has terminated, with guarantee of re-instatement after one year. Others provide for periods of unpaid leave ranging from three months to three years for family reasons, and give priority for re-instatement. A bill tabled in 1983, proposing to introduce a system of parental leave for all employees, has not yet been adopted by the Chamber of Deputies. It is likely that the parental leave which will be introduced in the private sector will take the form to which the European social partners agreed last December in the outline agreement on parental leave. This recognizes that both mother and father have an individual, non-transferable right to three months of parental leave in order to care for a child within a determined age range. The legislators introduced an education allowance in 1988 in order to give the parent(s) an opportunity to devote themselves partially or completely to raising one or more young children and to

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[161] The Act of 16 April 1979 establishing the regulations governing civil servants, article 30, paragraph 1, and article 31, paragraph 1.

[162] The Act of 16 April 1979, establishing the regulations governing civil servants, article 30, paragraph 2, and article 31, paragraph 2.

[163] The Act of 3 July 1975 concerning the protection of pregnant women in the workplace, article 5, paragraph 4.

[164] Ibid.

subsidize low-income parents, enabling the child or children to be raised in reasonable circumstances.

*Breastfeeding

If they so request, working women must be granted two breastfeeding periods of 45 minutes each, at the beginning and end of their normal working hours. If there is only one hour's break in the working day, or if it is impossible for the woman to feed her child near her workplace, the two breastfeeding periods may be combined and taken together.[165]

2. (d) Special protection for pregnant women in the workplace

It should be noted that throughout pregnancy and for three months subsequent to delivery - seven if the woman is breastfeeding - the employer may not assign a woman to physically demanding work or to work which would expose her to the harmful effects of noxious substances or radiation, dust, gas, emissions, heat, cold, humidity, impact or vibration.[166] Coupled with this prohibition, the employer is obliged to assign the woman concerned to other work, at her previous salary.[167] In cases where a change of assignment is not possible, the law provides that the woman's level of remuneration must be maintained, even if her productivity is reduced. The Ministry of Labour is drafting a bill which would seek to transpose directive 92/85/EEC concerning the implementation of measures to improve the security and health of pregnant, recently-delivered and breastfeeding women in the workplace. This directive will entail certain specific changes to the aforementioned Act of 3 July 1975, particularly with regard to exemption from work when a change of position is not possible.

The act also prohibits pregnant women from working at night,[168] and from working over-time.[169]

3. Revision of protective measures

Luxembourg is revising its legislation on the protection of women. It therefore felt it necessary, with effect from 19 February 1983, to denounce Convention No. 4, concerning Employment of Women during the Night and Convention No. 89, concerning Night Work for Women Employed in Industry.

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[165] Above-mentioned Act of 3 July 1975, article 7, paragraph 2.

[166] Above-mentioned Act of 3 July 1975, article 5, paragraph 1.

[167] Above-mentioned Act of 3 July 1975, article 6.

[168] Law of 3 July 1975 concerning the protection of pregnant women in the workplace, article 4.

[169] Law of 3 July 1975 concerning the protection of pregnant women in the workplace, article 7, paragraph 1.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health-care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

1. *General remarks

Health policy is deliberately organized in such a way as to allow the population general access to health care, with no distinction between men and women. This objective is realized on the one hand by almost total coverage of the population by the health insurance system in its various forms (mandatory, continuing or optional), and the granting of subsidiary rights to family members (spouse, children, parents), and on the other hand, through free preventive care. During the period 1990-1992 life expectancy at birth was 79.1 years for women, and 72.6 years for men.[170]

Infant mortality during the period 1981-1985 was as follows: 29 of 10,949 live-born boys died within a year of birth, while 20 of 10,246 live-born girls died within their first year. For the period 1986-1990, the figures were 22 deaths per 11,648 births for boys and 17 per 11,103 births for girls.[171]

*Cancer

In Luxembourg, breast cancer is the leading cause of death among women between the ages of 35 and 60.[172] The mortality rate from breast cancer is increasing particularly in the age groups 45 to 54, 55 to 64 and 65 and over.[173] [174]

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[170] Annuaire statistique du Luxembourg 1994, Statec, 1995.

[171] Figures calculated on the basis of data supplied by the Annuaire statistique du Luxembourg 1994, Statec, 1995.

[172] Brochure "Santé pour tous" ("Health for All"), Ministry of Health, April 1994, p. 50, also figure No. 4, p. 7 of the same brochure (c.f. annexes).

[173] "Health for All" brochure mentioned above, figures C.6 and C.7, p. 45.

[174] Given that Luxembourg's overall population is small, the mortality rates in the age groups under 45 and their variations over the years may be all the more erratic in that the number of deaths in these categories is low.

In 10 years, that is to say between 1978 and 1988, mortality due to breast cancer, taking all ages together, has increased by 34.6 per cent;[175] the mortality rates in Luxembourg remain steadily above the regional average for Europe.[176]

For these reasons, in 1992 the Ministry of Health, the Union of Health Insurance Companies and the Luxembourg League (now Foundation) against Cancer jointly introduced a programme to systematically screen women for breast cancer using mammography. All women between the ages of 50 and 65 years who reside in Luxembourg and are affiliated to a Luxembourg health insurance scheme were invited to have a mammogram. The x-rays are examined by two radiologists working independently from each other. If they come up with conflicting diagnoses, they consult one another. Finally, the x-rays are sent to the woman's personal doctor who informs her of the results and examines her. Thus far, only 35 per cent of the women who were invited to participate in the screening programme are doing so.[177] A further consciousness-raising campaign has just been launched[178] and the goal is to achieve a participation rate of at least 60 per cent. Measures are also being organized to screen for cancer of the cervix.

*AIDS/HIV infection

HIV infection and AIDS are less common among women than men. Of the total number of AIDS cases registered between 1984 and 7 December 1995, only 12.5 per cent relate to women. In the group of people diagnosed with HIV infection, 20.43 per cent are women.[179] Screening for AIDS and HIV infection is done on a voluntary basis and the tests are free of charge. The results are strictly confidential. There are no large-scale prevention activities targeting just women. However, women are targeted, just as men are, by general information activities. There are special prevention activities for prostitutes since they are a high-risk group; they are informed about the risks and provided with condoms.

"AIDS Berodung", the AIDS consultation service of the Red Cross which was set up in 1988 and is regulated by the Ministry of Health, carries out information activities and provides psycho-social services for people, both men and women, with AIDS or infected with the HIV virus.

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[175] C.f. above-mentioned brochure, "Health for All", p. 16.

[176] C.f. above-mentioned brochure, "Health for All", figure C.7, p. 45.

[177] "Bulletin de liaison", published by the Ministry of Health, the Union of Health Insurance Companies, the Luxembourg Foundation against Cancer, Europe against Cancer, November 1995 (c.f. annexes).

[178] C.f. the leaflet "Le programme mammographie" published by the Luxembourg Foundation against Cancer, Europe against Cancer, the Ministry of Health and the Union of Health Insurance Companies.

[179] C.f. annexes.

At the international HIV and AIDS film festival which AIDS Berodung, with the support of the Ministry of Health, organized in Esch-sur-Alzette from 6 to 8 October 1995, short and full-length films were shown which were of particular interest to women.[180]

*The Elderly

The measures taken by the authorities to provide for elderly persons who are infirm, do not include specific measures for women. However, given the breakdown of the population in the 70 and over age group, it is clear that more women than men benefit from these measures.

The Government measures include measures to increase both home care and residential care.

In recent years the number of beds where medical attention is provided increased by over 50 per cent. At the same time, retirement homes have been turned into integrated centres providing both day care and around-the-clock care for the elderly, and they have also been equipped to provide for the infirm.

The price of bed and board in State establishments is determined in accordance with an individual's financial position, any deficit being paid for by the State; the latter also picks up the tab of hospital stays once health insurance benefits cease.

*Abortion

Whereas, under the earlier provisions of the Penal Code, which dates from 16 June 1879, abortion was punishable in all cases, the new provisions introduced in 1978 legalized abortion to some extent and under certain conditions.

The Act of 15 November 1978 concerning sex education, prevention of back-street abortion and regulation of abortion states in article 1 that "the law shall guarantee respect for all human beings from the moment that life begins" and that "this principle shall not be violated save in case of necessity and according to the conditions defined by the present Act" and it abolishes the penalty of imprisonment provided for in the old article 351 of the Penal Code. While abortion is still banned, in principle, it is punishable only by a fine.[181]

This ban is softened by the statement in the second paragraph of that same article which states that "where [the woman] is acting under the influence of a situation of special distress, there shall be no violation". It is clear from

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[180] C.f. attached poster for the festival.

[181] Article 351, first paragraph, of the new Penal Code states: "A woman who has an abortion shall be punished by a fine of from [2,501 to 20,000] francs". This amount should be multiplied by four following a recent change in the scale of fines.

the parliamentary documents that the Government of the time included that phrase in order "to give the judiciary the possibility of allowing the woman to go unpunished in cases where it recognized the precarious nature of the woman's situation".[182]

The provision which has given rise to the most dispute is contained in article 353 of the Penal Code which states:

"1. However, abortion performed within the first 12 weeks of pregnancy shall not be punishable:

(a) When continuation of the pregnancy, or the living conditions which might result from the birth, could endanger the physical or mental health of the woman;

(b) When there is a serious risk that the child may have a serious disease, or extensive physical deformities or mental impairment;

(c) When the pregnancy may be considered to have been the consequence of an act of rape."

These provisions therefore cover therapeutic or eugenic abortions and abortion in cases where the pregnancy is the result of a criminal action. According to the explanatory introduction to the bill "the therapeutic indication is based on the notion of health, defined not as the absence of disease but as overall well-being, physical, mental and social".[183]

The abortion can only be performed provided that the woman:

(1) Has seen a gynaecologist or obstetrician and been informed of the medical risks of the procedure (article 353 (1)d 1 of the Penal Code);

(2) Has given her consent, in writing, such consent not being required if the woman's life is in danger (article 353 (1)d 2 of the Penal Code);

(3) Has had time to reflect (one week from the time she sees the gynaecologist or obstetrician) (see article 353 (2)b of the Penal Code), unless there is imminent danger to her life.

The following conditions also apply:

(1) The woman must have been legally domiciled in the Grand Duchy of Luxembourg for a period of three months (article 353 (2)a);

(2) The procedure can be performed only by a doctor who is licensed to practice the art of healing in the Grand Duchy of Luxembourg, and only after he

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[182] Parliamentary document No. 2146, p. 22.

[183] Parliamentary document No. 2146, page 16.

or another qualified doctor has certified, in writing, the existence of one of the grounds justifying termination of the pregnancy;

(3) The procedure can only be performed in a hospital [or any other establishment certified for that purpose by the Minister of Health - in fact no other establishment has been certified].

Abortions can be performed later than the first trimester "if two qualified doctors certify in writing that there is a very serious threat to the woman's health or life or to that of the unborn child" (article 353 (3) of the Penal Code).

We do not have any figures regarding the number of abortions performed in Luxembourg. For one thing, the law does not require that the two necessary documents (consent of the pregnant woman and written certification by a qualified doctor of the existence of one of the grounds justifying abortion) be transmitted to the authorities. For another, even though abortion expenses are reimbursed by the health insurance companies[184] the description of the surgical procedure in question (evacuation of a gravid uterus by curettage or aspiration prior to 14 weeks; evacuation of a gravid uterus by hysterotomy or the administration of drugs after 14 weeks of pregnancy) makes it impossible to distinguish between procedures performed in cases of spontaneous abortion and those performed when the abortion is induced.

It seems that many women living in Luxembourg who wish to terminate their pregnancy go abroad to do so as in the past. One possible explanation for this is that they want to escape social disapproval, since Luxembourg society is relatively conservative.

The family planning centres which are regulated by the State operate in the various regions of the country. They offer assistance and counselling to persons on the various contraceptive methods, on the rights, help and advantages which are guaranteed by law to families and to single mothers, on adoption and on the possibilities of a legal abortion.

They are permitted to provide all medical treatment in connection with sex education to the extent that such treatment can be provided in a non-hospital environment. The information activities and consultations are free and medication can be given free of charge to certain persons, including young people.

Other private organizations also provide counselling in respect of sex education.

Contraceptives, except for condoms, are covered by the same legislation as pharmaceutical products: a doctor's prescription is needed in order to get them and no advertising is permitted. However, they are not reimbursed under health insurance schemes.

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[184] Article 13 of the Act of 15 November 1988.

2. Special protection for women during pregnancy

The Act of 20 June 1977 instituted regular check-ups during pregnancy and in the postpartum period; its aim was: (1) to institute regular check-ups for pregnant women who were very young; (2) to change the existing legislation concerning birth benefits. Having regular check-ups is a requirement in order to receive payment of both the first and second instalment of the birth benefit (that is to say the prenatal benefit and the birth benefit itself).[185] [186] The attending physician may request the intervention of a medical-social worker or social worker if the expectant mother needs special care due to her state of health or her situation. In 1975, specific legislation was introduced providing for the protection of pregnant women in the work place.[187]

Persons with insurance are entitled to be cared for by a midwife during delivery, to medical assistance, to stay in a maternity home or clinic, and to pharmaceutical supplies and infant formula.[188]

Health education programmes are organized for expectant mothers and young mothers. Breastfeeding is strongly encouraged.

The maternal mortality rate is low in absolute figures; however, owing to the small number of births, one maternal death can greatly affect the statistics: during the past 10 years there have been two maternal deaths - one in 1987 out of 4,238 births and one in 1990 out of 4,936 births.[189] The other years there were no maternal deaths although there were 4,603 births in 1988 and 4,665 in 1989. The proportion of births to mothers under 20 years of age has dropped from 7.8 (1968-1971) to 2.8 (1989-1991) per 100 births.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

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[185] Articles 1 and 5 of the Act of 20 June 1977 mentioned above.

[186] See below under article 13.

[187] See above under article 11.

[188] Article 26, first paragraph of the Social Insurance Code. The term "persons with insurance" covers not only those who are entitled as contributors, but also those who have subsidiary rights as the spouse or child of a contributor.

[189] See "Annuaire statistique du Luxembourg 1994", Statec, 1995.

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

(a) Family benefits

The maternity benefit

The maternity benefit[190] is given, in principle, to all women who are pregnant or who give birth, but since it cannot be drawn concurrently with any other benefit and given its subsidiary nature, in practice it is now paid only to homemakers or women who are not affiliated to a social security scheme by virtue of having a professional activity.

The birth benefit[191] is given to any woman, without distinction as to age or nationality, provided that, she goes for the scheduled check-ups throughout her pregnancy.[192]

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[190] Prior to being amended by the Act of 31 July 1995, article 1, para. 1 of the Act of 30 April 1989 establishing a maternity benefit read: "Any pregnant woman and any woman who delivers, provided that she is domiciled in the Grand Duchy of Luxembourg and that she was legally domiciled there throughout the year preceding the date of entitlement as provided for in article 2 below. The maternity benefit is also paid if the woman does not meet the condition of duration of residence specified above but if the condition of legal domicile in the Grand Duchy of Luxembourg is met by her spouse during the three years preceding the aforementioned date. In the event of adoption of a child who has not yet started primary school, the benefit is paid for the eight weeks following the date when the adoption judgement was recorded in the civil registers. [...] The condition of domicile provided for above must be met by the person or persons adopting." Paragraph 1 of this article was amended as follows: "Any woman who is pregnant and any woman who delivers shall be entitled to a maternity benefit provided that she was legally domiciled in Luxembourg at the time of the entitlement as provided for in article 2 below." Article 2 of the Act states: "The benefit shall be paid, upon request, for up to 16 weeks starting the eighth week prior to the estimated date of delivery as recorded in a medical certificate ...".

[191] The birth benefit was introduced by the Act of 20 June 1977 which was designed to: (1) introduce regular medical check-ups for pregnant women and very young children; (2) modify existing legislation concerning the birth benefit. An Act of 31 July 1995 eliminated the requirement that the woman must have been legally domiciled in Luxembourg for at least one year. The birth benefit is paid in three instalments: the prenatal benefit, the birth benefit proper and post-natal benefit. The first and second instalments are paid as soon as the woman can prove that she has had the required medical check-ups; the third is paid when the child has had scheduled medical check-ups.

[192] See above under article 12.

The family benefits[193] are paid to parents in order to compensate them for the expenses resulting from the child or children. It is a personal entitlement of the child. Where the parents live together the benefit can be paid to either parent; it is up to them to decide jointly which one will receive the family benefits. In practice, in the absence of any instructions to the contrary, benefits are paid to the father. In the event of separation or divorce, the benefit will, in principle, go to whoever has physical custody of the child.

The same is true of the start-of-the-school-year benefit and the education benefit. The former is given to parents of children aged six or over and is intended to make up for the expenses they incur at the start of the school year.

The education benefit is given to anyone who is bringing up one or more children in their home and devotes themselves primarily to educating the child or children at home and does not engage in any professional activity or receive any replacement income. It is also given to the parent whose income - even though they are engaged in a professional activity or receive replacement income - when taken together with that of their spouse, that does not exceed a certain amount.

(b) The right to bank loans, mortgages and other forms of financial credit

In principle, there is complete equality between men and women as far as the granting of financial credit is concerned.[194] The conditions must be the same for men and for women. In practice, however, one often finds that women who wish to take out a loan are required to provide additional guarantees. Banks often require that the husband co-sign the loan.

(c) Right to participate in recreational activities, sports and all aspects of cultural life

This right applies equally to both men and women.

The training centre for women, families and single parent families has established a vocation-leisure group. The members are mostly women, who feel cut off from other parents and who meet for joint outings to restaurants, the cinema, museums or for group travel.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of

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[193] Act of 19 June 1985 concerning family benefits and establishing the National Family Benefit Fund.

[194] Any discrimination against women by banks or financial institutions will be covered by the Penal Law once bill No. 4071, which is mentioned under article 2 above under the heading 'Penalties' has been adopted.

the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health-care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Women who work in agriculture are either boss or assistant. There are very few women wage earners in agriculture.

The boss is the person by whom and at whose risk the farm is operated. The assistant is a relative or person related by marriage who helps the boss operate his business but is not paid, even though he or she does not engage in any other remunerated professional activity.

In agriculture there are relatively few women bosses. These are generally widows, who continue to operate the family business after their husband dies. Women can, however, acceded to that position on the same footing as men.

The distinction between assistant and boss is useful primarily for purposes of the assignment of public aid relating to farmers.

As regards social security benefits, in the past, women married to agricultural workers were seldom affiliated to the agricultural pension fund.

The Act of 14 February 1974 changed the situation: such women are considered to be automatically affiliated to the agricultural pension fund as long as their husbands practise farming as their main occupation and, that being so, they are insured with the Agricultural Health Insurance Fund.

On the level of principles, this Act officially recognizes that farmers' wives are engaged in an occupation. Furthermore, it has a concrete financial impact on these women because it provides for them to be awarded a pension in their own right.

Since the 1987 reform of the pension contribution scheme and the health insurance reform of 1992, persons who are self-employed in an occupation that comes under the jurisdiction of the Chamber of Agriculture, as well as their spouses, blood relatives and relatives by marriage, both direct and collateral to the third degree inclusive, have automatic health, old age and accident coverage. However, the spouse, blood relative and relative by marriage must be at least 18 years of age and provide essential services to the primary insured, such that those services can be considered their main activity.[195]

This insurance entitles the primary insured and the assistant to disability benefits if they are unable to work, and entitles women farmers to payment of the maternity allowance.[196] Before the reform of 1992, non-salaried women were not entitled to replacement income while on maternity leave, although they did receive the maternity allowance.[197]

Since 1 January 1994 women farmers are entitled to payment of the maternity allowance during the legal maternity leave or parental leave in the case of adoption, provided that they have contributed to the compulsory insurance scheme for at least six months of the year preceding the leave.[198] This maternity allowance is determined in the same way as the disability benefits. The amount of the maternity allowance is based on the contributions, which are based on the occupational income of the insured individual.[199] Occupational income is established inclusively, based on the production (crops and animals) of the farming operation during the previous year.[200]

Before the Act of 15 December 1986, which was based on EEC Directive 79/7, wives who were self-employed in an agricultural activity but whose husbands were

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[195] Article 1, section 1, paragraphs 4 and 5, and article 171, section 1, paragraphs 2 and 6 of the Social Security Code.

[196] Articles 9 and 12 of the Social Security Code.

[197] See above, article 13 (a) on maternity allowances.

[198] Article 25 of the Social Security Code.

[199] Article 33 of the Social Security Code.

[200] Article 36 of the Social Security Code and Grand Duchy regulation of 24 December 1993.

engaged in a non-agricultural activity were excluded from joining the agricultural social security system.

This exclusion had two consequences. Firstly, these women were not entitled to a pension in their own right. Secondly, they were denied the status of farmer practising farming as a main occupation, which opens the door to various types of assistance from the Ministry of Agriculture.

The Act of 15 December 1986 allowed them to join, under certain conditions relating to the required minimum area for a farm (set at 15 hectares by the Grand Duchy regulation of 29 January 1989).

However, although women agricultural workers are equal to men under law, in practice, some differences remain.

This can be noted in particular in the area of professional qualifications. Fewer than 10 per cent of these women are currently enrolled in agricultural education programmes. Thus it is not surprising that there are virtually no women in decision-making centres in agriculture.

This is true in the Chamber of Agriculture as well as the agricultural unions and the management of agricultural associations and cooperatives. It is true that the two largest agricultural unions each have a sub-group for women, and that these groups are represented by a delegate on the union's executive board, but that does not negate the fact the women farmers do not have nearly as much decision-making power as men in actions involving farming as a profession.

Concerning access by rural women to education and health care, see articles 10 and 12 respectively.

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

*The second paragraph of article 11 of the Luxembourg Constitution states, without making any distinction, that Luxembourgers are equal before the law.

Article 8 of the Civil Code stipulates that "every Luxembourger shall enjoy civil rights".

Single women have always had the same rights as men and, since the Act of 12 December 1972 on the rights and duties of spouses, marriage no longer changes the legal capacity of married women. Article 216 of the Civil Code expressly recognizes: "Marriage has no effect on the legal capacity of the spouses, except in application of article 476 (emancipation by marriage); nevertheless their powers can be restricted by the marital property regime and by law." Furthermore, article 1123 of the Civil Code states that "any individual can enter into a contract, if not declared incompetent to do so under the law".[201]

The husband is no longer the master of the community property nor the head of the family. Each spouse has the right and ability to enter into exactly the same legal agreements as his or her partner.[202]

- Men and women receive equal treatment in judicial proceedings.[203]

- Any contract that seeks to restrict the legal capacity of the wife would run counter to the public order and thus would be null and void.[204] However, there is no express provision of the law to that effect.

- The Constitution guarantees individual freedom;[205] that encompasses freedom of movement and applies equally to men and women.

Men and women have the same right to choose their residence; since the passage of the Act of 12 December 1972, the joint residence of the spouses is determined by mutual agreement, or failing that, by a judge.[206] The family home is especially protected and one spouse may not dispose of or mortgage the property or any other real right thereto without the consent of the partner,

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[201] According to article 1124 of the Civil Code, non-emancipated minors and adults protected in accordance with article 488 of the Civil Code (adults who, by their wastefulness, intemperance or idleness are at risk of ending up in straightened circumstances or compromising the fulfilment of their family obligations) may not conclude contracts.

[202] For more details, see below under article 16.

[203] See above, article 2, "legal protection".

[204] Under articles 1131 and 1133. Article 1131 states: "An obligation that is without grounds, or that is based on false or illicit grounds, can have no effect." Article 1133 states: "The grounds shall be illicit when it runs counter to good morals or public order."

[205] Article 12 of the Constitution.

[206] Article 215 of the Civil Code. The initial bill provided that, failing agreement between the spouses, the husband chose the residence.

even if the property belongs to that spouse. Any such action can be revoked.[207]

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

1. (a) In principle, women and men have the same right to enter into marriage.

Nevertheless, a woman cannot enter into a new marriage until 300 days have elapsed since her husband's death. This waiting period is cut short if she

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[207] Ibid.

gives birth after her husband's death. The widow can request that the waiting period be shortened simply by writing to the President of the Circuit Court; the latter will accede to the request if it is obvious, from the circumstances, that her previous husband had not lived with her in the past 300 days.[208]

Likewise, a divorced women may remarry as soon as the divorce decree becomes final, as long as 300 days have elapsed since the presidential order granting permission to sue for divorce.[209] This waiting period is cut short if she gives birth after the order was issued.

A woman's freedom to enter into a new marriage is thus more restricted than that of a man, but this restriction is intended to protect the interests of the children conceived during the marriage.[210]

Another difference is found in the minimum age for marriage, which is lower for women than for men: article 144 of the Luxembourg Civil Code states that a man cannot marry before the age of 18 while a woman cannot marry before the age of 16.

(b) The same right freely to choose a spouse and to enter into marriage only with free and full consent is guaranteed equally to women and men.

No marriage can take place without the consent of both parties.[211] In a case where one of the spouses is a minor, the consent of his or her mother and father is also required.[212]

(c) Men and women have the same rights and responsibilities during marriage: they must be faithful to, and help and assist one another. As noted above,[213] the Act of 12 December 1972 abolished the reference to a wife's duty to obey her husband. The two spouses are thus true partners, the law reserving basic decisions to the spouses' common agreement, or to the earliest petitioner.

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[208] Article 228 of the Civil Code.

[209] Article 296 of the Civil Code.

[210] Article 342 of the Civil Code defines the legal period of conception as follows: "The law presumes that the child was conceived during the period between the three hundredth and the eightieth day, inclusive, before the date of birth. Conception is presumed to have taken place at some time during this period. (...)" This article should be read together with article 312 of the Civil Code which states: "a child conceived during the marriage has the husband as its father." Accordingly, it assumes the paternity of the husband.

[211] Article 146 of the Civil Code.

[212] Article 148 of the Civil Code.

[213] See article 2 above, under "Civil Law".

The spouses contribute to the marital expenses in proportion to their respective abilities. They make their contribution through their professional or domestic work, by what they bring to the marriage and by levies from their personal property. If one spouse's contribution is looking after the home, the other is obligated to provide all the necessities of life, according to his means and status.[214]

The divorce legislation was reformed in 1978 and a provision was introduced into article 300 of the Civil Code whereby one spouse may be required to pay alimony to the other, even when both parties were at fault.[215] Before the Act of 15 March 1993, in such cases the court had to take into account the seriousness of the fault of the spouse requesting alimony. The Act eliminated the reference to the fault of the spouse requesting alimony, but it does prohibit the partner by whose sole fault the divorce is granted from receiving alimony.

When one party is solely to blame for the divorce damages can be awarded to compensate for the material or moral injury the other partner will sustain due to the dissolution of the marriage.[216] This is intended to protect a wife who is financially dependent on her husband because she was engaged in unpaid activity in the family home.

Also with a view to protecting the wife, the Ministry of Social Security has drafted a bill providing for the sharing of contributory pensions in case of divorce, as well as certain measures intended to complement the pension coverage of a spouse who abandoned or cut back on her career during the marriage.[217] Its purpose is to improve the pension coverage of a divorced spouse by granting her a part of the former spouse's pension proportional to the length of the marriage, and also to make it possible for a spouse - divorced or not - who interrupted her career to build up her own pension.

With regard to adultery as a grounds for divorce, see the discussion under article 2.

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[214] Article 214 of the Civil Code.

[215] According to article 300 of the Civil Code, alimony should meet the needs of the claimant and be commensurate with the means of the party required to pay alimony.

[216] Article 301 of the Civil Code, introduced by the Divorce Reform Act of 5 December 1978.

[217] Bill No. 3883, Grand Duchy decree deposited 28 February 1994. See also bill No. 3935 which seeks to divide the pension in the event of divorce, under the State civil service pension scheme, as well as the corresponding amendment to the Act of 22 December 1989 which seeks to coordinate pension schemes and amend various social security provisions. This bill provides similar measures for public sector workers.

(d) By the fact of their marriage, the partners mutually undertake to care for, support and raise their children.[218] The child has the right to press its claim for support at any time against either father or mother. Natural children have the same rights as legitimate children, as long as their blood relationship has been legally established. Likewise, the child has an obligation to support its father and mother as needed.[219]

Since 1975, the father's authority as head of the family has been replaced by the parental authority of father and mother exercised jointly.[220] Where there is a disagreement between father and mother, the guardianship magistrate decides.[221]

In the case of divorce, the tribunal ruling on the divorce will award custody of the children to either of the spouses or to a third party, depending on what is in the children's best interests. Visitation rights may be denied to the non-custodial parent only on serious grounds. In a case of divorce or legal separation, legal authority belongs to the spouse who was awarded custody of the child. No matter who has custody, the father and mother retain the right to supervise the care and education of the children, and are required to contribute thereto commensurate with their means. If affiliation has been legally established in respect of only one of the parents, the latter exercises parental

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[218] Article 203 of the Civil Code.

[219] Article 205 of the Civil Code.

[220] Parental authority covers the person and property of the minor. As for the person, article 371 of the Civil Code states: "A child of any age must honour and respect its father and mother", while article 372 of the Civil Code states: "He remains under their authority until his majority or emancipation."

The father and mother have authority in order to protect the safety, health and morals of the child. It is their right and their duty to care for, supervise and educate the child. Article 375 of the Civil Code states: "During marriage, the father and mother exercise their authority jointly."

As for the property of the minor, article 382 of the Civil Code provides: "The father and mother are responsible for the administration and enjoyment of the property of their minor child." Moreover, article 389, section 1 declares that "the father and mother, whether legitimate or natural, who exercise parental authority, are the legal administrators of the property of their non-emancipated minor children", while article 389.5 says that "when legal administration is exercised jointly by the father and mother, each may carry out alone simple administrative actions. For all other actions they must act together."

[221] Article 375.1 of the Civil Code regarding the person of the child and article 389, section 2, of the Civil Code regarding the child's property respectively.

authority. When a natural child has been recognized by both parents, in principle, the mother alone exercises parental authority.[222]

(e) Although under the law of Luxembourg, men and women are free to decide on the number and spacing of their children, the sale of contraceptives, other than condoms, is by medical prescription only and all advertisement of such products is prohibited. Moreover, they are not reimbursed by health insurance plans.

(f) If neither the mother nor the father is capable of exercising parental authority, a guardian will be appointed. The individual right to choose a guardian, whether a relative or not, falls to the surviving father or mother.[223] Nothing prohibits the designation of a woman as guardian. If the surviving father or mother has not designated a guardian, the next of kin shall be appointed guardian.[224] Women and men are subject to the same conditions for the adoption of a child.

(g) *Choice of a name

A decree issued on 6 Fructidor of the year II (23 August 1794) stipulates that no citizen can bear any name or surname other than those found on the birth certificate. The wife does not take her husband's name on marriage but retains the name she was given at birth. The practice of wives taking their husband's surname or placing their husband's family name before their own is only a custom, certainly secular, but without any legal basis.

Despite these fundamental legal principles, the Electoral Act of 31 July 1924, before it was amended by the Act of 18 August 1995, stipulated that each voter should be registered in the electoral rolls under their name, surname and other title, but that married women and widows should be entered under their husband's family name, followed by their own surname. Thus, the Act of 31 July 1924 endorsed the secular custom described above. A judgement of 4 October 1993 handed down by the magistrate's court of Luxembourg gave rise to a discussion, because it accepted the applicant's claim, in proceedings brought against the communal administration, that she should be entered on the electoral rolls for the communal election only under her own family name. The court explained in its reasoning that article 9 of the Electoral Act of 31 July 1924 conflicted with the Constitution and with the Convention on the Elimination of All Forms of Discrimination against Women of 8 December 1979. Other magistrates' courts advanced different arguments. After much heated debate, the

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[222] See article 2 above, under "Civil Law".

[223] Article 397 of the Civil Code.

[224] Article 402 of the Civil Code.

Act of 18 August 1995 re-established full equality of men and women with regard to name, at least in law.[225]

As for the choice of surname of children, Luxembourg lodged a reservation when it ratified the Convention, based on long-standing tradition whereby children take their father's surname. For so-called legitimate children, this tradition is not embodied in any law. For so-called natural children, article 334.2 of the Civil Code states that "a natural child shall take the surname of the parent with whom his affiliation is first established. If affiliation is established simultaneously with both parents the child shall take its father's name. In such a case, the natural child may take its mother's surname while a minor, if both parents make a joint declaration to that effect before the guardianship magistrate ...".[226]

It is not out of the question that Luxembourg might remove this reservation. But, judging from the deep differences of opinion that have been expressed regarding whether a married woman should be listed on the electoral rolls under her maiden name, it is unlikely that this will happen in the near future.

*Choice of occupation

Each spouse has the right to engage in a profession, industry or trade without the consent of the partner.[227] If, however, the partner believes that this activity may be seriously detrimental to his or her moral or material interests or those of their minor children, he or she may appeal to the circuit courts. This possibility of interdiction does not apply, however, to public offices and duties.

(h) Since the passage of the Act of 4 February 1974 reforming the marriage settlement regimes, spouses are completely equal with regard to patrimonial rights during marriage.[228] The rules of the Civil Code governing the management of community property provide that each spouse shall retain sole

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[225] The Act of 18 August 1995 stipulates that married or widowed voters shall be registered under their father's family name, to which they may add, if they wish, the notation "husband or wife (widower or widow) of ... (full name of spouse).

[226] Article 334.3 of the Civil Code stipulates: "Even if affiliation with the father is established secondarily, the natural child may take the father's if, during his minority, both parents make a joint declaration to that effect before the guardianship magistrate (...)".

[227] Article 223 of the Civil Code.

[228] See article 2 above.

control of any property he or she contributes to the marital property[229] and shall dispose of it freely, except for the gift or sale of immovable property, business premises or farms, for which the other partner's consent is needed.[230] Furthermore, each partner is responsible for any misrepresentation or fault on their part.[231] Each spouse had the right to administer and enjoy his or her own property and may dispose of it freely.[232]

Each spouse has the power to conclude contracts individually for the purpose of maintaining the home or educating the children. Both spouses are jointly and severally responsible for these debts, unless these expenditures are excessive in relation to the family income or obligations arising from instalment purchases made without the consent of both spouses.[233]

Each spouse can open any type of deposit or securities account in his or her own name, without the other's permission.[234]

Each spouse receives his or her own earnings and salary and the income from his own property and can freely dispose of it after meeting his or her marital responsibilities.[235]

2. Betrothal and marriage of children

Under Luxembourg law, betrothal does not constitute a contract, but a juridical event. While the engaged couple are free to break off the engagement, they must realize that whoever is responsible for the breakup may be sued for breach of promise and have to pay damages.

The marriage of children under the age established[236] in article 144 of the Civil Code may be annulled.

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[229] The returns and income from individual property which came due or were realized during the marriage and the product of labour and property acquired during the marriage become community property. Property which the spouses owned before they married and property acquired through inheritance or gift remain individual property.

[230] Articles 1421, 1422, 1424 of the Civil Code.

[231] Article 1421 of the Civil Code.

[232] Article 1428 of the Civil Code.

[233] Article 220 of the Civil Code.

[234] Article 221 of the Civil Code.

[235] Article 224 of the Civil Code.

[236] The age is 18 for men, 16 for women. The Grand Duke may grant a dispensation for serious reasons, generally if the girl is pregnant (article 145 of the Civil Code).

Nevertheless, no further action can be taken against the marriage of children once six months have elapsed since one or both of the partners attained the required age or if the wife, not having attained that age, has conceived a child within the six months.[237]

Registration of marriages in an official registry.

A public notice of the couple's intention to marry is posted on the door of the city hall for 10 days prior to the marriage ceremony.[238]

On the day of the wedding, the mayor, acting as registrar, after hearing each party in turn declare that they wish to take each other as husband and wife,[239] pronounces, in the name of the law, that they are united in marriage, and issues the marriage certificate immediately.[240] Notation of the marriage is made in the margin of the birth certificate of each spouse.[241]

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[237] Article 185 of the Civil Code.

[238] Article 63 of the Civil Code.

[239] Article 75 of the Civil Code.

[240] Ibid.

[241] Article 76 of the Civil Code.